SUPPLEMENTARY REPORT OF CANADA ON THE APPLICATION OF THE PROVISIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN RESPONSE TO QUESTIONS POSED BY THE HUMAN RIGHTS COMMITTEE IN MARCH 1980

Department of the Secretary of State

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FOREWORD

Canada's report on the application of the provisions of the International Covenant on Civil and Political Rights, prepared in accordance with article 40 of the Covenant, was submitted to the Secretary-General of the United Nations in March 1979. The report was reviewed by the Human Rights Committee, created under the Covenant, in March 1980. Members of the Canadian delegation who were present at the meeting replied orally at the time to numerous questions raised by members of the Committee and it was agreed that Canada would provide further information in writing as asked for by members of the Committee.

The present report has therefore been prepared in order to supplement the information contained in the report submitted in 1979 and in response to questions raised by members of the Human Rights Committee.

The report is presented in two parts and contains a number of appendices. The first part contains information on the new provisions of Canada's constitution, information on matters under federal jurisdiction together with occasional comparisons with provincial legislative provisions. The second part contains an analytical summary of the replies provided by provincial and territorial governments to the questions raised by members of the Committee.

The questions of the Committee have been arranged by the Covenant articles concerned. Some questions that were addressed orally at the time have been amplified where it has been deemed appropriate.

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PART I:

GOVERNMENT OF CANADA'S RESPONSES TO QUESTIONS POSED BY THE HUMAN RIGHTS COMMITTEE

In April 1979, Canada presented its Report on the application of the provisions of the International Covenant on Civil and Political Rights. The Report was reviewed by the Human Rights Committee in March 1980. The purpose of this document is to complement the answers given at the time by the Canadian delegation to questions raised by the members of the Committee.

Before doing so, the Canadian Government would like to bring to the Committee's attention the Canadian Charter of Rights and Freedoms (Constitution Act, 1982, c. 11, (U.K.)). Except for the equality right (section 15) which shall take effect on April 17, 1985, the Constitution Act, 1982 came into force on April 17, 1982, thereby incorporating into the Canadian constitution a Charter of Rights. This Charter guarantees certain fundamental freedoms, as well as certain democratic rights, mobility rights, legal rights, equality rights and linguistic rights. For a more detailed description of these rights, the full text of the Charter is set out in Appendix I.

Apart from the protected rights and freedoms, the main characteristics of the Charter are as follows:

1. The Charter applies to Parliament, the provincial legislatures and the legislative authorities of the territories as well as to the federal, provincial and territorial governments in all matters within their respective authority (sections 30 and 32). Governmental laws and practices are subject to the Charter's provisions. Non-governmental activities, however, generally escape its reach.

2. A law does not contravene the Charter if it restricts a guaranteed Charter right, in a way that is reasonable and justifiable in a free and democratic society (section 1). The limitation, however, may not be relied upon where the attempted limit on the Charter right is not prescribed by law.

3. The rights set out in the Charter cannot be construed so as to restrict any aboriginal, treaty or other rights of the Indian, Inuit and Métis peoples (section 25). Any conflict between Charter rights and the rights of aboriginal peoples will be resolved in favour of the aboriginal peoples.

4. Notwithstanding any other provision of the Charter (including those relating to aboriginal peoples), the rights and freedoms referred to in it are guaranteed

equally to male and female persons (section 28).

5. The Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians (section 27).

6. The fact that a right is not guaranteed under the Charter does not call into question to validity of that right. It may continue to exist even though it does not benefit from the protection accorded by entrenchment in the Charter (sections, 22, 26 and 29). A person alleging a breach of such a right may rely on all other means of protection provided under Canadian laws.

7. The Charter adheres to the federal nature of Canada. It does not confer on any one level of government powers belonging to the others (section 31).

8. The fundamental freedoms, the legal rights and the equality rights protected under the Charter are subject to a "notwithstanding clause". In effect, the Charter permits Parliament, the provincial legislature and the legislative assemblies of the territories to adopt laws which expressly restrict section 2 (fundamental freedoms), sections 7 to 14 (legal rights) and section 15 (equality rights). In order to effectively restrict these rights, Parliament or legislatures must expressly declare that the act operates notwithstanding one or all of these provisions of the Charter. All such acts must be re-enacted every five years, otherwise they will cease to have effect (section 33).

Anyone whose Charter rights have been infringed may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just with the circumstances (subsection 24(1)). Moreover, where a law is inconsistent with a provision of the Charter, a court must declare the law to be, to the extent of the inconsistency, of no force or effect (section 52). Also, where evidence was obtained in a manner that infringed or denied any Charter right, it will be admitted unless it is established, having regard to all the circumstances, that its admission would bring the administration of justice into disrepute (subsection 24(2)).

The Québec Government recently took advantage of its right in section 33 of the Charter, to incorporate an opting out clause into all provincial acts in force as of April 17, 1982 (An Act respecting the Constitution Act, 1982, sanctioned June 23, 1982). The provincial government also indicated that such an opting out clause will be incorporated into all acts adopted after the coming into force of the Charter. As a result, Charter provisions concerning fundamental freedoms, legal rights and

equality rights do not apply to acts adopted by the province in exercising its jurisdictions. This result, however, does not mean that Québec residents are without these protections. They may rely upon the Québec Charter of Human Rights and Freedoms, R.S.Q. c. C-12, which binds the provincial Crown.

Under the Charter of Human Rights and Freedoms (hereafter referred as "the Québec Charter"), everyone in Québec enjoys the same fundamental freedoms and most of the legal rights as those found in the Canadian Charter of Rights and Freedoms (sections 3 and 23-38). Throughout, distinctions based on race, colour, sex, sexual orientation, civil status, religion, political conviction, language, ethnic or national origin, social condition, the fact of being handicapped, and the fact of using any means to palliate a handicap are prohibited in matters relating to employment, publicity, the making of juridical act, and to the supply of goods, services and accommodation ordinarily offered to the public (section 10-20). Any unlawful interference with any right or liberty recognized by the Québec Charter entitles the victim to obtain the cessation of such interference and compensation for the resulting moral or material prejudice. Furthermore, in cases of unlawful and intentional interference, the tribunal may condemn the person guilty of it to exemplary damages (section 49). If, however, an act authorizes a restriction on the rights and freedoms set out in the Provincial Charter, the protection available under it is limited. In effect, the Québec Charter does not prevail over acts passed prior to June 27, 1975, the date upon which it came into force. With respect to acts passed subsequently, it prevails only as regards the rights set out in sections 9-38 (right to professional secrecy; right to full and equal recognition and exercise of human rights and freedoms, without distinction, based on one of the above-mentioned grounds, right not to be a victim of discrimination in the areas of employment, provision of goods, services and accommodation based on one of the prohibited grounds; poltical rights; and judicial rights). A subsequent act inconsistent with the Québec Charter may nonetheless expressly state that it applies despite the Charter (section 52).

The Québec Government has recently amended the Charter of Human Rights and Freedoms to better meet the needs of Québec society (An Act to amend the Charter of Human Rights and Freedoms, Bill 86, sanctioned on December 18, 1982). Once put into force, the new Québec Charter will provide protection similar to that in the entrenched Charter with respect to human rights and fundamental freedoms. The texts of these amendments and the Québec Charter of Human Rights and Freedoms are attached in Appendix II.

In addition to the Canadian Charter of Rights and Freedoms, Canada undertook to protect the rights of aboriginal peoples in its constitution, as of April 17, 1982, the date when the Constitution Act, 1982, c. 11 (U.K.) took effect. Pursuant to section 35 of the Constitution Act, 1982, the existing aboriginal and treaty rights of the Indian, Inuit and Métis people of Canada are recognized and confirmed. Any law that is inconsistent with this provision is of no force or effect (section 52). Before April 17, 1983, the Federal Government must convene a constitutional conference with the participation of the native representatives, at which the rights of aboriginal peoples shall be discussed (section 37). If the various governments in Canada are unable to agree on the identification and definition of the rights of aboriginal peoples, the courts reserve the right which they already possess to define these rights.

GENERAL PROVISIONS: CANADIAN CONSTITUTIONAL LAW

1. Does the division of jurisdiction among federal, provincial and territorial governments not give rise in practice to overlapping and conflicting jurisdictions?

Like all other federal systems, the Canadian federal system is characterized by a division of jurisdiction between federal and provincial governments. Clearly, there will always be areas in a federal context in which there is disagreement, areas which require change and in which specific problems arise. We cannot therefore deny that there are conflicts in Canada among the various levels of governments, or overlaps in jurisdictions. However, there are mechanisms for resolving these conflicts. First, we should mention the courts which, in Canada, may rule and in fact do rule on the constitutionality of federal and provincial legislation. However, governments consider recourse to the courts more and more as a method that should only be used as a last resort, if no other solution is available. For this reason, nearly all constitutional disputes brought before the courts result from actions by individuals. Governments themselves prefer to rely on the various mechanisms for federal-provincial cooperation, that is, exchanges of positions and direct consultation among senior public servants from several governments, followed by consultation among federal and provincial politicians, to solve the problems that arise from overlapping jurisdictions.

The protection of human rights is an area in which there are few constitutional conflicts. For the most part, such conflicts have dealt with the applicability of anti-discrimination legislation or laws governing the right of employees to form associations. Such disputes are generally directed toward determining whether a complaint against a business which is alleged to have committed a discriminatory act, or an application by a union for certification, should be governed by federal legislation or by a provincial or territorial Act.

2. Are the provinces empowered to enter into treaties, particularly in the field of human rights protection?

In international law, the question of whether the members of a federal union may enter into treaty or international accords is dependant on the constitution of the state in question. In Canadian law, the provinces may not enter into treaties or conventions which have the effect of creating international obligations. Only the federal government has the necessary authority to enter into such accords.

However, the power to enter into treaties in no way affects the division of jurisdiction among different levels of government that is created by the Constitution Act, 1867 to 1982. A level of government may only give effect to the provisions of a treaty in the legislative areas within its jurisdiction. For this reason, the federal government must ensure that the provincial governments intend to give effect to the provisions of an international accord which the provinces would be required to implement before entering into such an accord.

3. What are the implication of ratification by Québec of the Covenant, both in Canadian constitutional law and in Québec law?

By ratifying the Covenant, Québec has undertaken no obligation toward the international community. In fact, in Canada, only the Canadian state, represented by the federal government, has international personality. No province has such personality. Québec cannot therefore ratify or accede to an international treaty such as the Covenant.

From the domestic point of view, Québec's ratification of the Covenant constitutes official and public recognition that that province intends to comply with the provisions of the Covenant. However, such recognition adds nothing to Québec's undertaking to give effect to the Covenant, which was given when Québec accepted Canada's accession to the Covenant.

In Québec law, such ratification confers no rights on an individual. It is purely declarative, and could not be invoked to request that the courts declare inoperative a statute of Québec that might be contrary to the Covenant, or to remedy any failure by Québec to comply with the Covenant.

4. Has Canada considered the possibility of charging a single body with the enforcement of the provisions of the Covenant at both the federal and provincial levels?

One of the goals of Canadian federalism is to ensure respect for local individuality within the national context. Each province or territory, therefore, within its own field of jurisdiction, is free to put into effect the mechanisms that it may choose to meet the needs of the people residing in the province. This principle is applied in the area of human rights as it is in other areas. For this reason, the federal government and the provincial and territorial governments have not considered the creation of a common body which would be charged with ensuring implementation of the provisions of the Covenant in areas within the jurisdiction of Parliament, the provincial legislatures and the

territorial commissioners in council. The fact that such a body does not exist does not in any way affect the protection available in federal, provincial and territorial laws to people residing in a province or a territory.

At neither the federal nor the provincial or territorial levels, have judicial or governmental bodies been entrusted with the responsibility of protecting all the rights and liberties recognized in the Covenant. Other than the court which play an important role in this area, several governmental departments and agencies work towards the protection of these rights. In this regard, we can mention the departments of Justice, Health and Welfare, and Labour, the Human Rights Commissions, and agencies responsible for the Status of Women, and the federal Department of the Secretary of State. These various bodies cooperate with each other through numerous formal and informal mechanisms. At the intergovernmental level, ministers as well as federal, provincial and territorial officials responsible for human rights gather to discuss common problems relating to the realization of human rights and freedoms. Ministers meet every two or three years, whereas officials meet every six months. There are also annual meetings of Justice ministers and deputy ministers. Similar meetings are held regarding health and social welfare, education and labour as well as the many other areas affecting human rights. Within each level of government, cooperation also exist amongst the various agencies working in the area of human rights. For instance, there exists, at the federal level, the Interdepartmental Committee on Human Rights and at the provincial level, the Alberta equivalent. In Québec, the provincial commission cooperates closely with other agencies, in particular, the Council on the Status of Women ("Conseil du status de la femme") and the Office of Handicapped Persons ("Office de la personne handicapée").

5. What would be the international and domestic implications if Canada did not carry out the obligations that it has assumed in acceding to the Covenant?

In acceding to the Covenant, Canada has undertaken to give effect to it. From a domestic point of view, if Canada does not give effect to the provisions of this treaty, any individual who believes himself or herself to suffer as a result may submit a written communication to the Human Rights Committee since Canada has acceded to the Optional Protocol to the International Covenant on Civil and Political Rights. However, if Canada ignored its international obligations, notwithstanding its accession to the Covenant and the Protocol, the only remedy available to the people would be of a "political" nature. They could pressure the federal government to comply with its undertakings, if that government is responsible for Canada's non

compliance. Such pressure could also be directed against the provinces and territories if they were responsible for such a situation. In the context of its international obligations, the federal government could also remind the provinces of their undertakings.

In international law, failure by Canada to comply with the undertakings given by it in acceding to the Covenant would imply, in the first place, that a communication could be submitted against Canada by an individual, under the Protocol, or by a State, which may rely on Article 41 of the Covenant. Furthermore, it should not be forgotten that Canada's accession to the Covenant does not preclude other remedies. In this regard, Article 44 of the Covenant clearly states that:

> The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

On this point, reference should be made to Resolution 1503 of the Economic and Social Council.

Furthermore, it would be possible for a Member-State of the United Nations to bring the question of Canada's failure to comply with its obligations under the Covenant to the attention of the General Assembly. The General Assembly could then take whatever measures it might consider appropriate, and which are authorized by the Charter of the United Nations, to resolve such a situation.

Finally, reference should be made to the views of some writers that Canada's non-compliance with its obligations under the Covenant raises the question of its responsibility to other states that are parties to the treaty, and confers on them the right to be compensated for damages resulting from such non-compliance (Thomas Burgenthal, "Codification and Implementation of International Human Rights" in Human Dignity: The Internationalization of Human Rights, New York, 1979, Aspen Institute for Humanistic Studies, p. 18; Louis Henkin, "Human Rights and 'Domestic Jurisdiction'" in Human Rights, International Law and the Helsinki Accord, Monclair/New York, Allanheld, Osmun & Co Publishers, Inc., pp. 30-31).

ARTICLE 2

1. Leaving aside the legal context, what is the attitude of Canadians toward human rights and the protection of such rights?

The Canadian population is in favour of the protection of human rights and provides substantial support for measures that the various levels of government take in this regard. However, the Government of Canada considers that it is not sufficient that people merely possess such rights: they must be conscious of them and be aware of their importance for their own welfare. For this reason, all levels of government, as well as those bodies charged with the responsibilities for protection of human rights, are attempting to sensitize people to their rights and to the means available to enforce their them.

2. Questions relating to the Canadian Bill of Rights:

The coming into force of the Canadian Charter of Rights and Freedoms has resulted in a considerable decrease in the importance of the Canadian Bill of Rights, R.S.C. 1970, Appendix III. The provisions of the Charter have replaced substantively the provisions of the Bill of Rights. The Bill of Rights, however will still have application with respect to the right of the individual to enjoyment of property, the right to equality before the law and the protection of the law and the right of a person to a fair hearing in accordance with the principle of fundamental justice (Bill of Rights, subsection 1(a) and (b) and 2(e)). On April 17, 1985, when section 15 takes effect, the Charter's equality rights will effectively replace these rights as found in the Bill of Rights.

a) What is the area of application of the Canadian Bill of Rights? Does it apply to statutes passed after it comes into effect? Is the War Measures Act the only Act to which the Bill does not apply?

The Canadian Bill of Rights is a federal statute. As such, its provisions apply only in those areas within the legislative authority of Parliament (Bill of Rights, s. 5(3)). Except for actions or things done, or orders, decrees and regulations established under the War Measures Act, or statutes that Parliament has expressly excluded from the application of the Bill of Rights, the Bill of Rights applies to all laws of Canada, whether they were proclaimed before or after it was passed (Bill

of Rights, ss 2 and 5(2); War Measures Act, R.S.C. 1970, c. W-2, s. 6(5)). The expression "law of Canada" refers to:

a) common law, to the extent that it can be abrogated, abolished or amended by the Parliament of Canada;

b) federal statute law, that is, Acts of Parliament and orders, rules or regulations under such Acts. Ordinances of the Commissioners in Council of the Northwest Territories and the Yukon Territory together with the regulations passed pursuant to such ordinances must also be considered as subject to the provisions of the Bill of Rights. The Commissioners in Council of the two Territories exercise the powers conferred on them by Parliament in their constituting statutes, and as a result, their ordinances must be considered as being made pursuant to an Act of Canada.

Finally, it should be noted that while Parliament may exclude legislation from the operation of the Bill of Rights (or the Charter) by including a "notwithstanding clause", no federal statute contains such a clause.

b) Who do the prohibited grounds of discrimination in section 1 of the Canadian Bill of Rights refer only to race, national origin, colour or sex? What are the implications of such a restrictive enumeration in relation to Article 2(2) of the Covenant, which prohibits discrimination relating to the rights recognized in the Covenant in a non-restrictive manner?

No federal or territorial statutes may be construed or applied in such a way as to abrogate, abridge or infringe any of the rights or freedoms recognized in the Bill of Rights, or to authorize the abrogation, abridgement or infringement of such right. If a statute which is not justified by a valid federal objective abrogates, abridges or infringes in any manner one of these rights, it may be declared inoperative by the courts. It matters little whether such statute discriminates against a given group or abridges the rights or liberties of the entire population. In both cases, the Bill of Rights applies. In considering a statute that abrogates, abridges or infringes the rights and liberties of only one part of the population, it is not necessary in order for the Bill of Rights to apply for the distinction to be based on race, national origin, colour, religion or sex. The Bill of Rights thereby gives effect to the anti-discriminatory provisions of Article 2(2), of the Covenant. The same can be said about the various rights and freedoms protected by the Canadian Charter of Rights and Freedoms.

c) What evidence must be given by a person who alleges that a statute is contrary to the Bill of Rights?

All federal statutes are presumed to comply with the Canadian Bill of Rights. Any person who alleges the contrary must therefore rebut the presumption of legality. He or she must definitively establish that the law in question specifically abrogates, abridges or infringes one of the rights and liberties protected by the Bill of Rights. It is not sufficient to rely on the Bill of Rights in vague terms or to rely in an inarticulate manner on the spirit and principles. On the contrary, it must be shown, after meticulous analysis of the content and the scope of a right protected by the Bill of Rights, and of the case law before the courts, that the law in question impairs the right. Such a conflict must be obvious; there can be no question "(Trans) of lightly setting aside the unambiguous expression of the will of Parliament" (Bernard Grenier, La Déclaration canadienne des droits: une loi bien ordinaire?, Québec City/Presses de l'Université Laval, 1979, pp 122-123).

d) What would be the attitude of the Minister of Justice if a Member of Parliament, a Senator or another person drew his or her attention to the fact that a Bill was incompatible with the provisions of the Bill of Rights?

Before a bill is submitted or presented to the House of Commons, the Minister of Justice must determine whether any of its provisions is inconsistent with the Canadian Bill of Rights (Bill of Rights, s. 3). Every bill submitted to the House of Commons is therefore presumed, unless the Minister indicates the contrary, to be in accordance with the Bill of Rights. If such is not the case, there is no doubt that the necessary measures to remedy the situation would be taken, either by the government, with respect to Bills submitted by it, or by the Members of Parliament or Senators concerned, with respect to private members bills.

If, after a Bill have been introduced in the House, a Member of Parliament or another person alleges and presents evidence that the bill is in conflict with the Bill of Rights, and brings this alleged conflict to the Minister's attention, the Minister would make a careful examination of the allegations. If, after examining the question, he or she came to the conclusion that the allegations were justified, appropriate measures would then be taken. The same would be the case for bills introduced in the Senate. If the Minister feels that such a bill does not contravene the Bill of Rights, those who disagree can contest its validity in the courts once it has passed in Parliament.

e) Do the provinces have legislation similar to the Bill of Rights? To what does such legislation apply?

Three provinces have passed legislation to protect fundamental rights in the same manner as the Canadian Bill of Rights. The Alberta Bill of Rights, S.A. 1972, c. 1, and the Québec Charter of Human Rights and Freedoms, R.S.Q. c. C-12, were described in the Report submitted by Canada to the Human Rights Committee in 1979, in accordance with Article 40 of the Covenant. The Saskatchewan Human Rights Code, R.S.S. 1979, c. S-24.1, was enacted by the provincial legislature on May 14, 1979, and proclaimed in force on August 7, 1979. This Code prohibits discrimination on the basis of race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry and place of origin, in matters of employment and provision of goods and services. It also recognizes the right of all people or class of persons to freedom of religion and conscience, freedom of expression, freedom of peaceful assembly and association, freedom from arbitrary arrest or detention and the right to vote in by-elections and, at least every five years, in general elections. Every law of Saskatchewan passed before or after the Code came into force is inoperative to the extent that it authorizes or requires the doing of anything prohibited by the Code, unless it is expressly declared in an Act that the Code will not apply.

Upon coming into force, the Canadian Charter of Rights and Freedoms diminished the importance of the provincial equivalents to the Bill of Rights. This is particularly true in the case of the Alberta Bill of Rights which provides identical protection and remedies available to the public. Obviously, this decrease in importance is less where the Charter's protection does not supplant, but rather co-exists with the protection under a provincial law. This is the situation in Saskatchewan where the protection mechanism is different, the Charter favours a judicial solution whereas the Saskatchewan Human Rights Code involves an administrative or quasi-judicial approach. In Québec, where the provincial government has relied upon its right to opt out of certain provisions of the entrenched Charter, the Québec Charter of Human Rights and Freedoms maintains its importance in all areas where the entrenched Charter does not apply.

As well, in Alberta, Ontario, Prince Edward Island, Québec and Saskatchewan the human rights legislation takes precedence over all other statutes or regulations. On this subject see also the discussion on Article 26.

3. Questions relating to the Canadian Human Rights Act:

a) Why does this statute, which was passed after the Covenant came into force in Canada, not prohibit all grounds of discrimination, as does the Covenant?

The Canadian Human Rights Act, S.C. 1976-77, c. 33, prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, or a conviction for which a pardon has been granted, in matters of employment and the provision of goods and services. It also prohibits discrimination on the basis of physical handicap in matters of employment. By this objective, the act falls within the context of the International Covenant on Economic, Social and Cultural Rights, rather than that of the International Covenant on Civil and Political Rights. By acceding to the first of these two treaties, Canada did not undertake to give immediate effect to all its provisions, but rather to ensure that they would take effect progressively.

The Canadian Human Rights Act, however, has a role to play in respect of the obligations assumed by Canada under the International Covenant on Civil and Political Rights. This statute is one of the means used by the federal government to give effect to the obligations it assumed under Articles 18, 20 and 25 of the Covenant. Naturally, there are other obligations; particularly with respect to the right of access to the public service, reference may be made to the recourse to the Anti-discrimination Branch of the Public Service Commission.

Even though the Canadian Human Rights Act does not prohibit all types of discrimination, the federal government, as well as the provincial and territorial governments, will be obliged to respect the equality rights recognized in section 15 of the Canadian Charter of Rights and Freedoms, unless a derogation is enacted in conformity with section 33. This section comes into force on April 17, 1985 and sets out, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

In practice, the Federal Government may not discriminate in areas of employment or the provision of goods, services, facilities and accommodation unless it is prescribed by a law, reasonable and justifiable in a free and democratic society (The Charter, section 1).

Finally, reference should be made to the fact that the federal government is currently studying the possibility of increasing the number of heads of discrimination prohibited under the Canadian Human Rights Act, with a view to giving effect to the

obligations assumed by Canada under the two international Covenants, as well as those which will arise from section 15 of the Charter.

b) How can complaints of discrimination under "an agreed settlement" be claimed to be settled under the Canadian Human Rights Act?

By passing the Canadian Human Rights Act, Parliament conferred the right to submit a complaint to the Canadian Human Rights Commission on people who believe they have been victims of a prohibited discriminatory action. The Canadian Human Rights Act provides that the Commission may, at any stage following the filing of a complaint, appoint a Human Rights Tribunal. Such a Tribunal may find that the complaint of discriminatory practices is substantiated and may issue an order against the person responsible to cease such practices. The adjudication of a complaint by a Tribunal, however, is considered by the Commission to be a mechanism of last resort. In practice, it prefers to approve a settlement which the parties may reach after the filing of the complaint, either during the investigation of the complaint ordered by the Commission, after the parties have been notified that the Commission considers the complaint to be substantiated, or finally, at the conciliation stage which may be ordered by the Commission. It should be noted, therefore, at the federal level, settlements resolve the vast majority of substantiated complaints made to the Commission. Similarly, the provincial and territorial human rights commissions attempt to resolve complaints through settlements. In Ontario, the Human Rights Commission settles 75% of the complaints made to it by way of conciliation.

By enacting the Canadian Human Rights Act, Parliament has permitted parties to reach amicable settlements, subject to the Commission's approval, because it believes it to be socially less divisive than the quasi-judicial procedure that is provided as a last resort. On this point, the fact that there can be a tribunal hearing encourages the parties in the majority of cases to reach an amicable settlement.

Anyone who contravenes an agreed settlement as approved by the Commission is liable upon prosecution with the consent of the Attorney General of Canada, by way of summary conviction, to a fine not exceeding $5,000.00, or if the accused is an employer, an employer association or an employee association, to a fine not exceeding $50,000.00. (Canadian Human Rights Act, subsection 46(1)(a), (2) and (5)).

In a settlement, the party that has committed a discriminatory practice may agree to admit responsibility and give an

explanation, pay damages, undertake to do something, such as employing the complainant.

c) What is the jurisdiction of the Canadian Human Rights Commission?

Parliament has charged the Commission with the following tasks:

1) receive complaints, undertake investigations and correct the situation in cases of discrimination;

2) provide assistance and advice with respect to special programmes;

3) institute information programmes to foster public understanding of the Canadian Human Rights Act;

4) carry out research programmes and undertake studies concerning discrimination;

5) consider recommendations received concerning human rights and individual freedoms;

6) take steps and encourage others to ensure that the physically handicapped have access to goods, services, facilities and accommodation that are customarily available to other people;

7) provide assistance and advice directed at ensuring compliance with the Act;

8) maintain close liaison with bodies or authorities in the provinces that are working against discrimination.

The Commission may at any stage following the filing of a complaint, but normally after the conciliation procedure has failed, appoint a Human Rights Tribunal to consider the complaint. The Tribunal must allow all parties to the matter, including the person against whom the complaint is made and witnesses, ample and full opportunity to appear and present evidence and argument, including the right to do so by counsel. At the conclusion of its inquiry, a Tribunal which finds that the complaint is substantiated may:

- order that the discriminatory practices cease;

- recommend the adoption of a special programme to prevent similar practices;

- order that an employee who has been unfairly dismissed be reinstated;

- order the defendant to compensate the victim for any or all expenses, as the Tribunal deems appropriate, incurred by the victim as a result of the discriminatory practice;

- order the defendant to compensate the victim, if it finds that the victim has suffered damages as a result of the discriminatory practice.

Orders of the Human Rights Tribunal may be filed with the Registry of the Federal Court of Canada to be made an order of the Federal Court.

d) What relationship exists among the Canadian Human Rights Commission and the Human Rights Tribunal and the courts?

Decisions of the Commission and the tribunals appointed by it to consider complaints made by people who claim to have been victims of a discriminatory act are subject to judicial review. For example, the Federal Court of Appeal, pursuant to its review powers, may quash any decision of the Commission if it finds that the Commission did not observe a principle of natural justice or has otherwise exceeded or refused to exercise its jurisdiction, has rendered a decision tainted by an error of law, or has rendered a decision based on an erroneous finding of fact or made in a capricious or arbitrary manner or without taking into account the evidence before it (Latif v Commission canadienne des droits de la personne, (1980) 1 F.C. 687).

4. Questions relating to remedies against the Crown for wrongful acts committed by its servants:

a) When is there a remedy against the Crown for torts committed by government employees? Is the Crown liable for wrongful acts committed by its servants when they were not acting in the performance of their duties?

An agent of the Crown committing a tort outside the normal course of his or her duties incurs only personal liability. However, if he or she commits an act in the performance of his or her duties, both the Crown and the individual incur liability. Sections 3(1) and 4(2) of the Crown Liability Act, R.S.C. 1970, c. C-38, clearly establish that the Crown is liable for damages in respect of a tort committed by one of its servants, and that it can be sued for any act or omission that might give rise to an action in tort against such person or his or her estate. On the other hand, if such an act or omission does not give rise to such an action against the individual, there is no remedy against the Crown.

However, it should be noted that the Crown is not liable in respect of anything done or omitted in the exercise of any power or authority by virtue of the prerogative or of a statute. Specifically, it is not liable in the exercise of any power or authority in time of peace or war for anything done or omitted, for the purpose of the defence of Canada or of training or maintaining the efficiency of the Canadian Forces (s. 3(6)).

Finally, it should be noted that the Crown is liable only for its employees. Certain people, such as Ministers of the Crown, Members of Parliament and employees of Parliament are not employees of the Crown. The Crown is therefore not liable for their acts. The same is true for people employed by the territorial governments. Such people are said not to be employees of the Crown (s 2).

b) What remedies are available to a person against the governments of the Northwest and Yukon Territories for the wrongful acts of one of these governments? Can an action be brough against such a public servant personally?

Refer to the territorial governments.

ARTICLE 3

1. What factors and difficulties arise in putting Article 3 into effect?

It is impossible for us to reply to this question without considering the obligations assumed by Canada under the International Covenant on Economic, Social and Cultural Rights. Equality in the exercise of civil and political rights cannot be dissociated from equality in the exercise of economic, social and cultural rights. The Government of Canada believes that if we wish to effect equality between women and men, three objectives must be achieved:

a) All people must have equal responsibilities, opportunities and rights, without regard to their sex and marital status, and these rights must be protected by law;

b) Women, like men, must have the opportunity to freely and consciously choose their lifestyle. As a result, no law or society should impose any role on men and women;

c) No privileged treatment should be founded on sex, except in regard to provisions for maternity and short-term provisions intended to reduce or eliminate the damages suffered by women resulting from discriminatory provisions in effect in the past.

It is important that all levels of government clearly undertake all steps necessary to transform the fundamental relationships existing in society, in order to ensure that the system prevents all possibility of discrimination. In order to reach this goal, it is not sufficient to eliminate discrimination in the statutes. In practice, equality requires changes in attitude and adjustments in the economic structure, which will lead to an immediate realignment of our interpersonal relationships.

If we compare the economic situation of the two sexes, we quickly observe that the situation of men is far superior to that of women.

- Although 51.6% of women in 1981 were in the labour market, they have not attained economic equality.

- In 1980, the average income of female heads of households was $14,969, while that of males with the same responsibilities was $28,781, or 92% greater.

- In 1980, poverty affected six times more families having a women as the head of the household than families headed by men. Of the latter group, only 6.5% had incomes below the

poverty line, while 38.9% of families headed by women fell below this line. In the category of single people, 34.7% of women, but only 22.0% of men, had incomes below the poverty line. Furthermore, 53.2% of women had incomes below $13,000 per year, while only 15.5% of men had incomes below that line. For poverty levels, see Appendix III.

- Although there is a great increase in the number of women in many professions, it must be noted that the majority of women still work in traditional jobs, such as stenographer, typist, salesperson, babysitter, maid, service employee, teacher, seamstress, waitress, nurse, nurse's aid and nursing assistant, telephone operator, caretaker and cleaner.

Improvement in the economic status of women will not occur easily, and will be a long and difficult task. However, these changes will be necessary if women want to obtain equality in other aspects of their lives and work. To reach this goal, Parliament passed the Canadian Human Rights Act, S.C. 1976-77, c. 33. This statute prohibits discrimination on the basis of sex in the area of employment, and guarantees equal pay for work of equal value. Although it directly affects only people working within the federal jurisdiction, it should result in changes in working conditions that will have important repercussions in the public and private sectors. Specifically, the conscientious application of equal pay for work of equal value will greatly contribute to the equality to which the government is aiming.

Implementation of affirmative action programmes may also assist in attaining this objective. The federal government believes that affirmative action programmes are an effective method of remedying discrimination that may be suffered by women or minorities groups in the area of employment. To this end, the Federal Government created the Affirmative Action Branch within the Department of Employment and Immigratiion. The mandate of this Branch is to promote the adoption of affirmative action programs. Three target groups have been identified, namely women, the physically handicapped and native people. The Branch's efforts are aimed at ensuring proportional representation of members from each group at all levels of organizations. In addition, employers may use the Systemic Discrimination Unit of the Canadian Human Rights Commission. This service informs employers about possible measures in order to conform to the Canadian Human Rights Act, and including affirmative action programs, which may be included in their employment policies, practices and procedures. Even though it is preferable for an employer to take the initiative to establish affirmative action programs, these programs may also result from a complaint made pursuant to the Canadian Human Rights Act. Thus, the Commission may impose an affirmative action program on a person found responsible for a discriminatory practice. As

well, before a Tribunal has investigated the complaint, the parties may agree to a settlement which the Commission may approve (Canadian Human Rights Act, sections 15, 38 and 41(2)(a)). Almost all provinces and the Northwest Territories have legislated that affirmative action programs are not discriminatory. Generally, in the provinces and territories, these programs are initiated by the employer, often after government encouragement and may be approved by a human rights commission. The commission's approval provides the employer with the obvious advantage of being protected against complaints by individuals who feel victimized by affirmative action programs. It also should be noted that the New Brunswick and Saskatchewan Human Rights Commissions are empowered to initiate affirmative action programs. Finally, a Saskatchewan Board of Inquiry may order such programs. (Individual's Rights Protection Act, R.S.A. 1980, c. I-2, s. 13; Human Rights Code of British Columbia, R.S.B.C. 1970, c. 186, s. 11(5); Human Rights Act, C.C.S.M. c. H-175, s. 9; Human Rights Code. R.S.N.B. 1973, c. H-11, s. 13(1); Human Rights Code, R.S.N.S. 1979, c. H-24, s. 19; Ontario Human Rights Code, 1981, S.O. 1981, c. 53, s. 13; Human Rights Act, S.P.E.I. 1964, c. 72, s. 19; The Saskatchewan Human Rights Code, S.S. 1979, c. S-24,.1, ss. 31(7)(a) and 47; Fair Practices Ordinance, R.O.N.W.T. 1974, c. F-2, s. 14). In Québec, Bill 86 (An Act to Amend the Charter of Human Rights and Freedoms), sanctioned on December 18, 1982, empowers the human rights commission to approve such measures submitted to it, to suggest the adoption of such programs when it finds a systemic discrimination, and to recommend to the tribunal to impose such programs when its own recommendations are not followed. The Act also provides that the Government must require from its ministries and agencies that they implement such programs. At the moment of preparing this report, the Act had not yet been proclaimed.

The federal government has undertaken to make certain changes between now and 1985 in areas of policy, research and programmes.

With respect to government policies, the government has agreed:

- to increase job training offered to women in non-traditional occupations;

- to consider methods of ending sexual harassment on the job. To this end, in May 1982, the Government adopted a policy prohibitting sexual harassment in the Public Service and, within each department, is establishing a mechanism to examine allegations of this conduct. As well, sexual harassment victims can rely on the protection of the Canadian Human Rights Act and its provincial & territorial equivalents and bring complaints against individual who sexually harass and against employers who tolerate this sort of activity.

- to examine the role of women in economic development;

- to make language training and orientation programmes more accessible to immigrant women;

- to reevaluate governmental assistance to voluntary organization.

- to make managers responsible for equal opportunity in the public service.

In the area of research, the government recognizes that the data now available is insufficient to permit it to undertake effective action to remedy the inferior economic status of women, and therefore it has directed that research be conducted into certain fundamental question, such as:

- the place of women in the Canadian economy;

- social security programmes and their effect on the economic status of older women;

- violence against women. To this end, the Department of National Health & Welfare recently established a Family Violence Information Centre. At the Centre, public bodies and non-profit private organizations who assist rape & family violence victimes may obtain information to assist in their goal. They may also receive technical assistance. In order to meet the demands for information, the Centre plans to organize workshops intended for health professionals, prepare a national information Bulletin, convence Conferences, prepare documents and elaborate various means to promote research & discussion.

In the area of government programmes, the federal government:

- will increase the aid offered in the matter of programmes to promote health in areas of vital concern to women, particularly the reliability of contraceptives, occupational hazards, health dangers, alcoholism and drug addiction, nutrition and the parental roles of men and women;

- will examine the possibility of setting up a national information centre on legal aid, research and services offered to victims of violence and rape;

- will improve the data systems in order to facilitate recovery of maintenance payments and child support payments;

- will attempt to encourage unions to institute educational programmes for women, through existing grants;

- will review the provisions of the Income Tax Act, R.S.C. 1952, x. 148 (as amended) that concern women.

Furthermore, Parliament recently adopted a Act amending the provisions of the Criminal Code, R.S.C. 1970, c. 34, dealing with sexual offences, in order to grant women more effective protection and to abolish all relics of sexism in the Code (An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof Bill C-127, 1st Session, 32rd Legislature).

Many important areas of concern to women in society are within the jurisdiction of the provinces and territories, particularly education, health and social services, the administration of justice, property rights and a large part of the legislation concerning labour and human rights. The provinces and territories must take the initiative, since they are the only ones empowered to intervene in these areas.

In practice, if we wish women to become independent and to enjoy equal rights, a goal to which we are all aiming, it is essential that there be close cooperation among the federal, provincial and territorial governments and non-governmental organizations. This is the challenge to be met in this era of social evolution when we all, women and men, are seeking equal and fair responsibilities in determining our individual and collective lives.

2. How are the various pieces of legislation enacted to ensure equal rights for men and women enforced?

Federal and provincial legislation prohibiting discrimination on the basis of sex in matters of employment and the provision of goods and services has had the effect of substantially reducing the incidences of discrimination. Particularly, it has resulted in the disappearance of the most flagrant cases of discrimination. However, it may still be asked what the effect of this legislation has been against more subtle forms of discrimination. For this reason, some people seek to have governments supplement the complaints system instituted under this legislation by affirmative action programmes according to which people who contract with governments would be required to improve employment or promotion opportunities for individuals belonging to disadvantaged groups, or to facilitate access by such individuals to goods, services, facilities or accommodations.

ARTICLE 6

1. Is Article 6 considered in Canadian law to impose on the State the obligation to take socio-economic measures to protect the right to life?

Article 6 of the Covenant requires Canada to take the necessary legislative measures to protect the right to life. These measures, as indicated by Canada in its report, may relate to the protection of the health or social well being of individuals. However, it should be noted that this Article only imposes minimum requirements. It must be supplemented by the provisions of the International Covenant on Economic, Social and Cultural Rights.

2. Section 201(a) of the Criminal Code provides that every master who unlawfully does, or causes to be done, bodily harm to his apprentice or servant so that his life is endangered or his health is or is likely to be permanently injured, is guilty of an indictable offence and liable to imprisonment for two years. Can a master inflict bodily harm less serious than that described in this provision with impunity?

In Canadian criminal law, a master may not use force against an apprentice or servant. Such a person has no particular immunity, and so would be guilty at the very least of common assault (Criminal Code, R.S.C. 1970, c. C-34, s 245(1)). He or she could also, depending on the case, be prosecuted under ss 245(2) (causing bodily harm) and 228(a) or (b) (causing bodily harm with the intent to wound or endanger the life of any person). It should be noted that although s. 43 of the Criminal Code authorizes a schoolteacher, a father or a mother, or any person standing in the place of a parent to use force "by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances", a master, who is neither a schoolteacher nor a person standing in the place of a father or a mother, cannot rely on this defence.

3. What criteria determine civil liability of employers with respect to accidents on the job?

Refer to the provinces.

4. If a person employed in a business coming within the jurisdiction of Parliament refuses to work because of an

imminent danger to his or her health or safety, on whom is the burden of proof?

When an employee relies on the right granted by s. 82.1(1) of the Canada Labour Code, R.S.C. 1970, c. L-1, complains of an imminent danger to his or her health or safety or to that of his or her colleagues, the employee does not have to prove the existence of such a danger. First, there will be a discussion between the employee and his or her supervisor, in the presence of at least one impartial witness, concerning the existence of the danger (s. 82.1(3)). At this stage, there will be an exchange of opinions. If the parties do not succeed in agreeing on the existence or absence of the danger, the complainant has the right to make a complaint to a safety officer (s. 82.1(4). Once the complaint is filed, the safety officer must make an investigation (s. 82.1(5)). It is for the officer to determine whether there is an imminent danger to health or safety in a given case as the complainant alleges. In order to do this, the officer may, inter alia, hear the parties. However, the complainant does not have to prove the existence of the danger. It is for the safety officer to determine whether the danger exists (s. 82.1(6)). If the officer believes that the complaint is not well-founded, the complainant may appeal to the Canadian Labour Relations Board (s. 82.1(8)). When the Board is notified of such an appeal, it will proceed without delay to hold a summary hearing. After considering the question, it will confirm the decision of the safety officer or give any direction that it considers appropriate (s. 82.1(9)). At this hearing, the complainant is not required to be present, but may be present if in the appeal application he or she requests to be present. At the hearing, the complainant will not have to prove the existence of an imminent danger. It is for the Board to determine, after considering the facts, whether such a danger exists.

5. At what point does Canadian law determine life to begin? Is a child considered to be born from the time of conception in Canadian criminal law?

For the purposes of the Criminal Code, a child becomes a human being when it has completely proceeded, in a living state, from the body of its mother. It is not necessary that the child have breathed or have an independent circulation or that the umbilical cord be severed (s. 206(1)). However, although the child does not acquire human personality for the purposes of the Code until it has proceeded in a living state from the body of its mother, the Code protects the child from the time of conception against abortion unless the abortion is certified by a therapeutic abortion committee of a hospital accredited by the Canadian Council on Hospital Accreditation or approved by the Minister of Health of the province in which the hospital is situated, to be

necessary in order to protect life or health of the woman (s. 251). It should also be noted that the Code prohibits the killing in the act of birth of any child that has not become a human being (s. 221).

In the matter of civil law, whether the civil law system of Québec or the common law of the other provinces and the territories, the child does not acquire legal personality until it is born and viable. However, civil law is also concerned with the conceived child; it grants such a child rights, whenever it is in its interests, particularly in matters of estate law and the law of damages. Such rights can only be exercised, however, once the child is born and viable.

6. Is abortion permitted in cases of pregnancy resulting from rape, and is there consideration not only of the physical health of the woman but also of her mental status?

The provisions of the Criminal Code governing abortion do not state expressly that rape is a ground justifying a therapeutic abortion (s. 251(4)(a)). However, in practice, where the therapeutic abortion committees of hospitals accredited by the Canadian Council on Hospital Accreditation or approved by the Minister of Health in the province in which the hospitals are situated believe that the consequences of such an act would affect the mental health of a woman, they may on this ground approve an application to interrupt the pregnancy.

7. The report indicates that the death penalty has been abolished for all crimes except for certain offences in military law. What are these offences?

Under the Code of Service Discipline (Parts IV to IX of the National Defence Act, R.S.C. 1970, c. N-4), the death penalty may, and in certain cases, must be imposed for certain offences. This penalty may be imposed:

a) for certain acts of cowardice on the part of officers in command in the presence of the enemy (National Defence Act, s. 63). These acts are as follows:

1. when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, not using his utmost exertion to bring the officers and men under his command or his vessel, aircraft, or his other materiel into action;

2. being in combat and neglecting, during the action, in his

own person and according to his rank, to encourage his officers and men to fight courageously;

3. when capable of making a successful defence, surrendering his vessel, aircraft, defence establishment, materiel, unit or other element of the Canadian Forces to the enemy;

4. being in action, improperly withdrawing from the action;

5. improperly failing to pursue an enemy or to consolidate a position gained;

6. improperly failing to relieve or assist a known friend to the utmost of his power; or

7. when in action, improperly forsaking his station;

b) for certain acts of misconduct not amounting to treason committed by any person in presence of the enemy (s. 64). These acts are:

1. improperly delaying or discouraging any action against the enemy;

2. going over to the enemy;

3. when ordered to carry out an operation of war, failing to use his utmost exertion to carry the orders into effect;

4. improperly abandoning or delivering up any defence establishment, garrison, place, materiel, post or guard;

5. assisting the enemy with materiel;

6. improperly casting away or abandoning any materiel in the presence of the enemy;

7. improperly doing or omitting to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of materiel;

8. when on watch in the presence or vicinity of the enemy, leaving his post before he is regularly relieved or sleeping or being drunk;

9. behaving before the enemy in such manner as to show cowardice; or

10. doing or omitting to do anything with intent t imperil the success of any of Her Majesty's Forces or of any forces cooperating therewith;

c) for spying for the enemy (s. 68);

d) for mutiny accompanied by violence (s. 69);

e) for an officer who, while serving in one of Her Majesty's Canadian ships involved in the convoying and protection of a vessel, fails to defend such ship (s. 95);

The death penalty must be imposed:

a) for certain acts of misconduct involving treason when they are committed in the presence of the enemy by officers in command (s. 63). These acts are identical to those for which the death penalty may be imposed (see page 19, 20 and 21), the difference being that they are treasonous rather than cowardly acts;

b) for certain acts of misconduct involving treason when committed by a person in presence of the enemy (s. 64). These acts are identical to those for which the death penalty may be imposed (see pages 19, 20 and 21), the difference being that they are treasonous rather than non-treasonous acts.

c) for certain offences relating to security if the person who is guilty of such offences acted treasonously (s. 65). These offences are:

1. improperly holding communication with or giving intelligence to the enemy;

2. without authority disclosing in any manner whatever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparation for operations or any of Her Majesty's Forces or of any forces cooperating therewith;

3. without authority disclosing in any manner whatever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of Her Majesty's Forces or of any forces cooperating therewith;

4. making known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it;

5. giving a parole, watchword, password, countersign or identification signal different from that which he received;

6. without authority altering or interfering with any identification or other signal;

7. improperly occasioning false alarms;

8. when acting as sentry or lookout, leaving his post before he is regularly relieved or sleeping or being drunk;

9. forcing a safeguard or forcing or striking a sentinel; or

10. doing or omitting to do anything with intent to prejudice the security of any of Her Majesty's Forces or of any forces cooperating therewith;

d) against any person who becomes or remains a prisoner of war, if such situation results from traitorous acts (s. 66).

Pursuant to s. 55 of the National Defence Act, the Code of Service Discipline applies:

a) to all officers and men of the regular force and the special force created to deal with an emergency situation or to carry out a task undertaken by Canada pursuant to the Charter of the United Nations; the North Atlantic Treaty or any other instrument to which Canada may subscribe for collective defense purposes;

b) to officers and men of the reserve force when they are:

(1) undergoing drill or training whether in uniform or not,
(2) in uniform,
(3) on duty
(4) called out to render assistant in a disaster,
(5) called out in aid of the civil power,
(6) called out on service,
(7) placed on active service,
(8) in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence,
(9) serving with any unit or other element of the regular force or the special force,
(10) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces;

c) to persons who, pursuant to law or pursuant to an agreement between Canada and the state in whose armed forces they are serving, are attached or seconded as officers or men to the Canadian Forces;

d) to certain civilians, including:

(1) individuals, not otherwise subject to the Code of Service Discipline, who are serving in the position of officers or men of any force raised and maintained outside Canada by Her Majesty in right of Canada and commanded by an officer of the Canadian Forces,

(2) persons, while serving with Canadian Forces under an

engagement with the Minister of National Defence whereby they agree to be subject to the Code,

(3) person who in respect of any service offence committed or alleged to have been committed by him, is in civil custody or in service custody;

(4) persons who accompany any unit or other element of the Canadian Forces that is on service or active service in any place. These would include:

- persons who participate with that unit or any element in the carrying out of its movements, manoeuvres, duties in aid of the civil power, or warlike operations,

- persons accommodated or provided with accommodation at his own expense or otherwise by that unit or other element in any country or at any place designated by the Governor in Council,

- persons who are dependants outside Canada of an officer or man serving beyond Canada with that unit or other element; and

- person who are embarked on a vessel or aircraft of that unit or other element;

f) persons attending an institution established for military training, and

g) persons alleged to be spies for the enemy.

The Code of Service Discipline also applies to prisoners of war, by virtue of subsection 7(1) of the Geneva Conventions Act, R.S.C. 1970, c. C-3.

8. Canada's Report indicates that the Governor in Council is fully aware of the obligations contracted by Canada under the Covenant, and that it is therefore unlikely that anyone under 18 years of age or a pregnant woman would be executed for an offence against the Code of Service Discipline. Is Canadian law in accordance with the Covenant on this point?

In the Report submitted to the Commission in 1979, the Government of Canada indicated that:

> under section 178(1) of the National Defence Act, "a punishment of death imposed by a court martial is subject to approval by the Governor in Council" and cannot be carried out without this consent. Since the Governor in Council is

fully aware of the obligations which Canada has contracted under this Covenant, it is unlikely that a person under eighteen years of age, or a pregnant woman would be executed for an offence against the Code of Service Discipline. Finally, in order to be carried out, all death sentences must be executed pursuant to regulations adopted by the Governor in Council under s. 175 of the National Defence Act. No such regulations exist at the moment, although the Governor in Council may enact such regulations at any time should this be required."

The federal government is thus aware of the difficulties raised by the existence of the death penalty for certain offences against the Code of Service Discipline in relation to Article 6(5) of the Covenant. This question was raised in a report prepared by the Interdepartmental Committee on Human Rights, and is now being considered by this Committee.

9. Section 224 of the Canadian Criminal Code creates two offences, which are counselling or procuring a person to commit suicide and aiding or abetting a person to commit suicide. What are the elements of these offences? How can they be proved, in the event that the victim is dead? Would a letter left by the deceased constitute proof?

The elements of these offences are:

a) with respect to s. 224(a), counselling or procuring a person to commit suicide;

b) with respect to s. 224(b), aiding or abetting a person to commit suicide.

In order for the Crown to lay a charge and obtain a conviction under either of these provisions, there need not have been a suicide: the act of counselling or procuring, or aiding or abetting, is sufficient. A confession, oral evidence and physical or documentary evidence may be used by the Crown to prove an offence under s. 224 of the Code. However, the Crown may not use a letter written by the suicide victim, or a note left by him or her implicating the accused, since such evidence would be contrary to the rule against hearsay evidence. Since it is impossible for the accused to cross-examine the suicide victim on the contents of such a document, it is not admissible in evidence.

ARTICLE 7

1. Canadian legislation, particularly the Criminal Code and the Royal Canadian Mounted Police Act, include provisions that are similar but not identical to Article 7. Could Canada provide further elaboration on this point?

The State Parties to the Covenant have the discretion which is necessary in implementing its provisions, as long as they comply with the obligations they have assumed. The provisions of federal law described at pages 22, 23 and 24 of Canada's Report must be considered from this point of view. These provisions have three objectives:

a) to prevent Parliament from passing laws which impose or authorize the imposition of cruel and unusual punishment or treatment by permitting the courts to declare such legislation to be inoperative (Canadian Bill of Rights, s. 2(b) Canadian Charter of Rights and Freedoms, ss. 12 and 52(1));

b) to prevent cruel, inhuman or degrading treatment, affecting the body or mind of an individual, along with medical or scientific experiments to which an individual does not submit voluntarily, by prohibiting actions that injure the integrity of the person. On this point, reference may be made to section 12 (cruel and unusual treatment or punishment) of the Canadian Charter of Rights and Freedoms, to ss. 245 (common assault or assault causing bodily harm; causing bodily harm), 228 (causing bodily harm with the intent to wound or endanger life), 229 (administering a noxious thing), 305 (extortion) and 381 (intimidation) of the Criminal Code;

c) to ensure, by means of an internal disciplinary procedure, that officers of the Royal Canadian Mounted Police and the officers or employees of the Canada Penitentiary Service do not take any excessive action against any person (Royal Canadian Mounted Police Act, R.S.C. 1970, c. R-9, s. 25(1) and 36(1); Penitentiary Service Regulations, C.R.C. 1978, c. 1251, s. 38; Commissioner's Directive No 245 on the use of force and firearms, dated August 29, 1980; Canadian Penitentiary Service Code of Discipline, instituted under s. 106 of the Public Service Terms and Conditions of Employment Regulations, SOR/67-118).

2. Is the transplant of human organs governed by legislation, by administrative regulation or by custom?

Refer to the provinces.

ARTICLE 9

1. Is the right not to be unlawfully deprived of liberty observed in practice?

In Canada, section 7 of the Canadian Charter of Rights and Freedoms recognizes the right of everyone to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Section 9 of the Charter recognizes the right of everyone not to be arbitrarily detained or imprisoned, even if the imprisonment is authorized under an Act. Section 10 guarantees to everyone the right on arrest or detention to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful. Within the jurisdiction of Québec, sections 24 and 30 of the Charter of Human Rights and Freedoms recognizes, "No one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure", and that everyone deprived of his or her freedom has the right to the remedy of habeas corpus.

In practice, instances of illegal arrest or detention are rare. The writ of habeas corpus provides an effective remedy to anyone who believes that he or she has been unlawfully detained. In addition to civil suits for damages, the police or officials who illegally arrest or detain an individual may face an internal inquiry or one by an external organization such as a police commission. Such an inquiry could result in disciplinary measures being taken.

2. Would it be possible to explain the provisions of the Criminal Code that permit the arrest of a person without a warrant, or on the basis of a simple complaint, without first undertaking an investigation in order to determine whether the complaint is well founded?

The Criminal Code provides for arrest with or without a warrant. The provisions of the Code setting out the powers of arrest may not be arbitrary, nor arbitrarily applied. These provisions are subject to section 9 of the Canadian Charter of Rights and Freedoms, by virtue of which everyone has the right not to be arbitrarily detained or imprisoned.

a) Arrest without warrant

An ordinary citizen is given the power to make an arrest by

the Criminal Code. Pursuant to s. 449(1) of the Code, he or she may arrest without warrant

a) a person whom he or she finds committing an indictable offence[1], or

b) a person who, on reasonable and probable grounds, he or she believes

i) has committed a criminal offence[2], and
ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.

Section 30 of the Criminal Code also permits an individual, who witnesses a breach of the peace to detain any person who commits or is about to join in or to renew the breach of the peace. Furthermore, the owner or a person in lawful possession of property and anyone authorized by such person may "arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property" pursuant to s. 449(2).

When a citizen makes an arrest, he or she shall forthwith deliver the person arrested to a peace officer (s. 449(3)).

As a general rule, a person will be arrested by a peace officer. Pursuant to s. 450(1) of the Code, a peace officer may arrest without warrant

a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he or she believes has committed or is about to commit an indictable offence,

b) a person whom he or she finds committing a criminal offence, or

c) a person for whose arrest he or she has reasonable and probable grounds to believe that a warrant is in force within the territorial jurisdiction in which the person is found.

There are, however, certain restrictions on a peace officer's power of arrest. Subsection 450(2) provides that a peace officer may not arrest an individual without a warrant for less serious

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1. The term "indictable offence" refers to an offence which may be prosecuted on indictment. A citizen could therefore not arrest an individual who is committing an offence which may be prosecuted by summary conviction.

2. The term "criminal offence" includes both offences which may be prosecuted by indictment and those which may be prosecuted by summary conviction.

offences, i.e., offences punishable on summary conviction, offences for which the person may be prosecuted by indictment or by summary conviction, at the discretion of the prosecutor, and offences within the absolute jurisdiction of the magistrate, in any case where:

"d) he has reasonable and probable grounds to believe that the public interest, having regard to all the circumstances including the need to

i) establish the identity of the person,
ii) secure or preserve evidence of or relating to the offence, or
iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

e) he has no reasonable grounds to believe that, if he does not arrest the person, the person will fail to attend in court in order to be dealt with according to law."

Lastly, it should be noted that section 31 of the Code authorizes a peace officer who witnesses a breach of the peace to arrest any person whom he or she finds committing the breach of the peace or who, on reasonable and probable grounds, he or she believes is about to join in or renew the breach of the peace.

b) Arrest with warrant

A justice who, having heard and considered, ex parte, the allegations of an informant and, where he considers it desirable or necessary to do so, the evidence of witnesses, considers that the information is justified, is empowered by ss 455.3(3) and 728(1) of the Criminal Code to issue warrants for arrest on receiving an information laid by anyone who has reasonable and probable grounds to believe that a person has committed an indictable offence. However, it is more the exception than the rule for a warrant to be issued. Justices should not issue a summons unless there are reasonable and probable grounds to believe that it is necessary in the public interest to issue a warrant for arrest. They may not sign a warrant in blank. The warrant must name or describe the accused, indicate the offence with which he or she is charged and order that he or she be arrested and brought before a justice.

The arrested person must appear before a justice. However, he or she will most often be released before appearance. The following schematic outline is a concise description of the procedure for release of the accused before appearance.

ARREST AND RELEASE OF THE ACCUSED BEFORE APPEARANCE

For the purposes of the Bail Reform Act, criminal offences are divided into three groups.

GROUP #1

a) offences punishable on summary conviction;

b) offences punishable both on summary conviction and by indictment; and

c) indictable offences within the absolute jurisdiction of a magistrate without a jury, 483.

PEACE OFFICER (1), (2), (3)

Powers

For an offence in this group, he may arrest without warrant a person:

a) whom he finds committing an offence punishable on summary conviction, 450(1)(b); or

b) whom he finds committing an indictable offence, 450(1)(b);

c) who he has reason to believe has committed or is about to commit an indictable offence, 450(1)(a);

d) for whose arrest he has reason to believe a warrant is in force within the jurisdiction in which the person is found, 450(1)(c).

Duties

He must not arrest the person if there are grounds to believe that the public interest may be served without arresting, 450(2). He may then issue to the person a notice to appear.[4]

If he arrests the person, he must give to him or her as soon as is reasonably possible a notice to appear, and release him or her, unless there are further grounds to detain the person, 452.

If he does not release the person, he must then place him or her in custody to be taken before a justice. He must also, for the same purpose, place in custody any person delivered to him after being arrested by a person who was not a peace officer, 454(1).

OFFICER IN CHARGE (peace officer or officer)

Powers

If the person in custody was arrested under a warrant, whether or not it is endorsed by the justice who issued it, he may release the person, if there are grounds to believe that it is no longer necessary in the public interest to detain him or her:

a) on the person's promise to appear (4);

b) on a recognizance without deposit of money (4); or

c) on a recognizance with deposit of money not exceeding $500.00, (4), 453(1).

Duties

Whether the person was arrested without warrant by a peace officer, or by a person other than a peace officer, if there are grounds to believe that it is no longer necessary in the public interest to detain him or her, he shall release the person:

a) with the intention of requiring the person to appear by summons; or
b) on a promise to appear (4); or

c) on a recognizance without deposit of money (4); or

d) on an undertaking with deposit of money not exceeding $500.00, (4) 453(1).

If he does not release the person, he must bring him or her before a justice without unreasonable delay, within 24 hours, or as soon as possible, 454(1).

GROUP #2

Indictable offences that are not within the absolute jurisdiction of a magistrate without a jury, and that are punishable by five years or less.

PEACE OFFICER (1), (2), (3)

Powers

For an offence in this group, he may arrest without warrant a person described in subparas (b), (c) and (d) above.

Duties

If he arrests the person, he must place him or her in custody to be taken before a justice. He must also, for the same purpose, place in custody any person delivered to him after being arrested by a person who was not a peace officer, 454(1).

OFFICER IN CHARGE (peace officer or officer) (2), (3)

Powers

If the person in custody was arrested under a warrant, whether or not it is endorsed by the justice who issued it, he may release the person, for the reasons and in the manners set out above, 453(1).

Duties

Whether the person was arrested without warrant by a peace officer or by a person other than a peace officer, he must release him or her for the reasons and in the manners set out above, 453(1).

If he does not release him or her, he must bring the person before a justice without unreasonable delay, within 24 hours, or as soon as possible, 454(1).

GROUP #3

Indictable offences that are not within the absolute jurisdiction of a magistrate without a jury and which are punishable by more than five years.

PEACE OFFICER (1), (2), (3)

Powers

For an offence in this group, he may arrest without warrant a person described in subparas (b), (c) and (d) above.

Duties

If he arrests the person, he must place him or her in custody to be taken before a justice. He must also, for the same purpose, place in custody any person delivered to him after being arrested by a person who was not a peace officer, 454(1).

OFFICER IN CHARGE (peace officer or officer) (2) (3)

Duties

Whether the person was arrested without warrant by a peace officer or by a person other than a peace officer, he must bring him or her before a justice without unreasonable delay, within 24 hours, or as soon as possible, 454(1).

N O T E S

1. A peace officer in possession of a warrant, whether or not it is endorsed by the justice who issued it, must arrest the accused and detain him or her in custody to be taken before a justice, 454(1).

2. A peace officer who arrests a person without warrant for an indictable offence committed in Canada, outside the province in which he or she was arrested, shall detain him or her in custody and take the person before a justice within whose jurisdiction he or she was arrested. If the justice decides to remand the person to the custody of the peace officer to await execution of a warrant, the person shall be released at the end of six days following the time of such remand, if no warrant for his or her arrest is so executed during that time.

3. A peace officer who has arrested without warrant a person about to commit an indictable offence, or the officer in charge having custody of the person, shall release him or her unconditionally as soon as practicable after he is satisfied that the detention of that person is no longer necessary in order to prevent the commission by the person of an indictable offence, 454(3).

4. An appearance notice delivered by a peace officer, and a promise to appear or a recognizance entered into by the accused before an officer in charge may, where the accused is alleged to have committed an indictable offence, require the accused to appear at a time and place stated therein for the purposes of the Identification of Criminals Act, 453.3(3).

Source: Chief Justice A. Dumontier, Sessions of the Peace, La Loi sur la réforme du cautionnement, (1972) Revue Légale, p.p. 492-499.

People who cannot be released or who are not released before appearance may be released before trial by a justice (s. 457) or by a judge of the superior court of criminal jurisdiction (or its equivalent) (s. 457.7), depending on the seriousness of the charge, if they meet the conditions provided in the Code.

3. Section 29(2) of the Criminal Code provides that everyone who arrests a person whether with or without warrant is required to give notice to that person, where it is feasible to do so, of the reason for the arrest or the warrant under which he makes the arrest. When is a person who arrests another permitted not to give notice of the reasons for the arrest to the arrested person?

As a general rule, the police officer or any citizen who arrests a person must advise that person of the reasons for the arrest. To this end, subsection 10(a) of the Canadian Charter of Rights and Freedoms is clear:

> "Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therfor."

However, if the accused makes such communication of information impossible (attempt to escape, assault, and so on) or if his or her mental state makes it impossible to provide such information (drunkenness, intoxication, mental illness), that person cannot complain about the failure to inform. However, once the person is under control, he or she must be notified of the reasons for the arrest or of the fact that the arrest is pursuant to a warrant.

If the arrest is made under a warrant, the person executing the warrant is required by s. 29(1) of the Code to have the warrant with him or her, if possible, and to produce it if requested. In Gamracy v The Queen, [1974] S.C.R. 640, the Supreme Court of Canada decided that if a police officer does not have the warrant authorizing the arrest with him or her, and is not aware of the contents of the warrant, he or she meets the obligation imposed by s. 29(2) of the Code by stating to the accused that the accused is being arrested under a warrant. In the opinion of the Supreme Court, it is not a duty of an officer to obtain the warrant in order to show it to the Appellant or to ascertain its contents. For a peace officer who is on patrol and receives an order to arrest, at his or her home, an individual against whom a warrant has been issued (R v Gamracy (1972), 7C.C.C. (2d) 221 C.A. Ontario, affirmed by [1974] SCR 640), or who approaches a suspect while on patrol and after a radio check with headquarters discovers that a warrant has been issued against such a person (R. v Broughton, (1975) C.C.C. (2d) 395), it is impossible to present a copy of the warrant to the person being arrested. As

a general rule, however, such an officer will be notified of the contents of the warrant and will disclose the content to the accused.

However, if it is possible for a peace officer to have the warrant with him or her when arresting someone, he or she is required to do so. Thus if a police officer who has a warrant in his or her office is required to arrest a person in the police building, he or she should, unless the circumstances of the case require immediate action, take the warrant along in order to present it to the accused (Richard v R., (1974) 27 C.R. NS 337 (S.C. Québec)).

When the accused is not aware of the reasons for the arrest, he or she has the right to resist, and to use force if necessary to free himself or herself. Furthermore, if the accused is unaware that the person making the arrest is a peace officer, he or she may then engage in legitimate self-defence. An individual who is arrested in such circumstances may bring action against the person responsible for the arrest, for false imprisonment.

4. Would it be possible to expand upon protection offered to persons who are detained for reasons of insanity? In particular, do the Review Committees mentioned in Canada's Report exercise a judicial junction?

This question involves both federal and provincial jurisdiction. Where an individual commits a federal offence, the Criminal Code sets out that if he or she is found to have been insane at the time of the offence or is found to be unfit to stand trial, he or she shall be held in strict custody in the place and manner that the Court directs, until the pleasure of the provincial Lieutenant Governor or territorial Commission in Council is known (subsection 542(2) and 543(6)).

The Lieutenant Governor in Council or Commissioner may make an absolute or conditional order to discharge the individual held under the above mentioned conditions, if in his opinion it would be in the best interest of the individual and not contrary to the interest of the public. An individual who is discharged with conditions must abide by the terms of the discharge order or face arrest without a warrant by a peace officer who has reasonable and probable grounds to belive that the individual has violated any condition in the order. If arrested, he or she shall be taken before a justice within twenty-four hours after the arrest or if no justice is available within the twenty-four hours, as soon as possible. The justice may order the detention of the individual until the Lieutenant Governor in Council or the Commissioner decide upon his or her discharge or detention (subsection 545(1)(a), (4), (5) and (6)).

In practice, an individual found to be unfit to stand trial or acquitted by reason of insanity is held in custody. The provincial or territorial government makes an order for the safe custody of the individual in the place and manner directed. He or she is so held until rehabilitated. For the purposes of rehabilitation, he or she may be transferred to another province or territory (subsection 545(1)(b), and (2)).

Further, if a person who is considered by the Lieutenant Governor or territorial Commissioner to be insane, mentally ill, mentally deficient or feeble-minded is serving a sentence in a prison in the province or territory, the Lieutenant Governor in Council or territorial Commissioner may order his or her transfer and detention to an institution dealing with these affirmities.

The case of every person in custody for the purposes of rehabilitation must be reviewed

a) not later than six months after the making of the safe custody order,

b) at least every twelve months, if the person continues to be held in custody after the first examination and

c) upon request by the provincial or territorial government.

The members of the review board are appointed by the government of the province or territory where the person is held in custody. A board consists of five members which must include at least one lawyer and two psychiatristis. Three members which include one lawyer and one psychiatrist constitutes a quorum (subsection 547(1), (2) (3) and (5)). During its inquiry, the board exercises no judicial or quasi-judicial power, being rather administrative in nature, with only the power to recommend. Nonetheless the board is under a duty to act fairly (Re Abel and Advisory Review Board (1981), 56. C.C.C. (2d) 153).

After each review, the board must report the results of its review to the Lieutenant Governor in Council of the province or commissioner of the territory where the person is held. The report must state:

a) where the person in custody was found unfit on account of insanity to stand trial, whether, in the board's opinion he or she has sufficiently recovered to stand trial,

b) where the person in custody was found not guilty on account of insantiy whether, in the board's opinion, he or she has recovered and whether it is in the interests of the public and the provincial government to discharge him or her, either absolutely or upon conditons,

c) where the person was transferred from a prison, whether,

in the board's opinion, he or she has recovered or partially recovered.

Where the board concludes that the inmate has not recovered, it may make any recommendations desirable in the interests of the person's recovery and not contrary to the public's interest (subsection 547(5)).

Following such a report, the provincial or territorial government may order one of the following, where appropriate:

a) where the person was orginally found unfit to stand trail; that he or she be returned to stand trial;

b) where the person had been acquitted on account of insanity, that he or she be discharged absolutely or with conditions;

c) where the person had been in prison and had been found to suffer from a mental imfirmity, that he or she be returned to prison, or if he or she is not liable to further custody in prison, be discharged.

It should be noted that prisoners in federal penitentiaires have the right to medical treatment, including psychiatric treatment (Commissioner's Directive, No. 207, on Medical and Health Services dated August 29, 1980). Prisoners suffering from more or less acute mental disorders or from emotional troubles may be transferred to a regional psychiatric centre. A centre has been established in each of the five regions of the Canadian correctional service (Maritime, Québec, Ontario, Prairies, Pacific). Being medical institutions, they must meet the criteria established by the Canadian Council on Hospital Accreditation, and must also conform to the norms established for these institutions (Commissioner's Directive No. 105 on Regional Psychiatric Centres, dated September 9, 1979, sections 7 and 8).

5. Does a person whose rights as recognized in the Covenant have been violated have legal means to obtain damages?

Anyone whose rights under the Covenant have been violated suffers personal injury. Under Canadian law, there exist various means to compensate the victim for the damages suffered.

The Canadian Charter of Rights and Freedoms should be first mentioned. Under subsection 24(1), a court of competent jurisdiction may grant anyone whose rights or freedoms, as guaranteed by the Charter, have been infringed or denied, such remedy as the court considers appropriate and just in the circumstances. Such a remedy, may be in the nature of monetary compensation. In Québec, several Charter provisions do not apply

since the provincial government relied on the "notwithstanding clause" to opt provincial laws out of its application (Charter, s.33). Québecers must rely, where possible, on the protection offered by the Charter of Human Rights and Freedoms L.R.Q. 1977, c. C-12. Section 49 of this Act provides that any unlawful interference with any right or freedom recognized by the Québec Charter entitles the victim not only to obtain the cessation of such interference but also compensation for the moral or material prejudice resulting therefrom. In case of unlawful and intentional interference, the tribunal may also condemn the person guilty of it to exemplary damages.

Other than the protection provided by the entrenched Charter and in Québec, by the provincial Charter, a victim of a violation of a right protected by the Covenant may also rely on laws governing civil liability to obtain compensation for damages suffered. In Québec civil law, "Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill" (Civil Code, Article 1053). He or she is also liable for damage caused by "servants and workmen in the performance of the work for which they are employed" (Civil Code, article 1054). Damage which gives rise to a liability action may be material or "moral". "Moral damages" is all suffering not resulting in a pecuniary loss. Such damages may result from wrongful infringement of a personal right, such as political and civil rights. For example, we may mention the right to life, liberty, honour, and a name, the freedom of conscience and speech and other political rights.

Within the English Canadian common law jurisdictions, an individual whose Covenant rights have been violated possess a civil remedy if a specific "tort" prohibits the action in question. In these jurisdictions, there exist no general principle of liability similar to article 1053 of the Civil Code. Each "tort" is a particular legal concept with precise parameters. For the most part, torts, such as negligence, false imprisonment, malicious prosecution and assault and battery, have evolved from the Common Law.

Provincial and territorial laws govern proceedings taken against the governments within each jurisdiction. Federally, the Crown Liability Act, R.S.C. 1970, c. C-38 provides that proceedings against the federal Government be governed by the Québec Civil Law if they arose in this province or by the Common Law in the other provinces.

Finally, we should note that a victim of a violation of a Covenant right may rely on certain statutory provisions to obtain compensation. In particular, certain federal and provincial laws, prohibit discrimination in employment and in the supply of goods and services. For example, the Canadian Human Rights Act, S.C. 1976-77, c. C-33 authorizes compensation to a victim of a

discriminatory practice not only for monetary loss resulting from such practices, but also compensation up to $5000 where the person engaged in the discriminatory practice wilfully or recklessly or where the victim has suffered in respect of feelings or self respect as a result of the practice (subsections 41(2) and (3)).

ARTICLE 10

1. How many people are imprisoned in Canada?

In 1980, approximately 23,000 adult, or about one per thousand individuals were incarcerated every day in federal, provincial and territorial correctional institutions. Out of this number, a little over 3,000 were held in provincial or territorial institutions awaiting trial. The remaining 20,000 serving sentences are equally distributed between provincial or territorial prisons (for sentences of two years less a day) and federal penitentiaires (for sentences of two years or more).

The following table sets out the number of adults in custody by province.

	Number	Per 100,000 inhabitants
Alberta	2838	141.0
British Columbia	2867	111.6
Prince Edward Island	105	85.4
Manitoba	1277	123.8
New Brunswick	678	96.7
Nova Scotia	840	99.2
Ontario	7371	86.7
Québec	5127	81.6
Saskatchewan	1183	123.4
Newfoundland	422	73.7
Northwest Territoires	167	389.4
Yukon	67	304.0
Canada	2,2942	96.9

Source: Government of Canada, The Criminal Law in Canadian Society. Ottawa, August 1982, pp. 97, 100 and 101.

2. Have legal and administrative provisions been enacted to implement the provisions of the Constitution Act of 1867, according to which Parliament and the legislative assemblies of the provinces share control of prison institutions?

Legislative, regulatory and administrative provisions governing correctional institutions at the federal, provincial and territorial levels, as described by Canada in its report on the implementation of the provisions of the Covenant have been enacted at the federal level and in the territories, pursuant to the authority conferred on Parliament by s. 91(28) of the Constitution Act of 1867 and s. 4 of the Constitution Act of 1867, while at the provincial level they have been enacted pursuant to s. 92(13) of the Constitution Act of 1867.

3. Are there well-defined institutions, such as supervisory or inspecting bodies, which ensure that the federal penitentiary authorities comply with the relevant legislation?

Such bodies exist both within and outside the Canada Penitentiary Service. Within the Penitentiary Service, one of the duties of the Offender Programmes Branch is to protect inmates' rights, from the time of their entry into the federal system until completion of their sentence and if necessary to redress any wrongs they may suffer. For this purpose, the Inmates Affairs Division is required to encourage fair and humane treatment of inmates, and is responsible for the revised grievance system instituted in August 1979 (Commissioner's Directive No 241 concerning inmate grievances dated May 31, 1980). This system is described concisely at p. 62 of the 1979-80 Annual Report of the Solicitor General of Canada:

> "(This system) involves submission of a written complaint by inmates at a pre-grievance stage. Introduction of this step has obviated formal grievances in 95 per cent of cases and has proven to be a quick way of settling problems before they become acute.
>
> Complaints not resolved at that stage can proceed to the first formal level of consideration which consists of discussion between staff and inmate. The complainant may ask for a review of the first level decision; in such circumstances the complaint is taken to the second level where it is heard by a review board of two volunteers from the community outside the institution.
>
> The third and final level for resolution of a complaint is the same as in the original grievance system. It consists of referring the problem to the Regional Director General and the Commissioner of Corrections. The change in procedure

brought a marked decline in the number of grievances reaching the final level."

Furthermore, the Inspector General's Branch is empowered to oversee the implementation of the policies and procedures of the Penitentiary Service and to determine their effectiveness. For this purpose, studies of all the operations in the area are carried out by the Inspector General every two years in maximum security institutions, and every three years in other institutions. Financial audits take place every three years. Senior management receives regular reports concerning the implementation of the recommendations of the audits and concerning the scope of changes carried out at all levels of the Penitentiary Service.

Finally, the Inspector General's Branch is responsible for liaison with the Correctional Investigator in the matter of the latter's recommendations, particularly those requiring policy changes.

The Correctional Investigator is a commissioner appointed under Part II of the Inquiries Act, R.S.C. 1970, I-13, by the Governor in Council, and as such is independent of the Canada Correctional Service and of the Solicitor General of Canada. His terms of reference are:

> to investigate, on his own initiative, on request from the Solicitor General of Canada, or on complaint from or on behalf of inmates as defined in the Penitentiary Act, and report upon problems of inmates that come within the responsibility of the Solicitor General of Canada, other than problems raised on complaint
>
> a) concerning any subject matter or condition that ceased to exist or to be the subject of complaint more than one year before the lodging of the complaint with the Commissioner,
>
> b) where the person complaining has not, in the opinion of the Commissioner, taken all reasonable steps to exhaust available legal or administrative remedies, or
>
> c) concerning any subject matters or conditions falling under the responsibility of the Solicitor General of Canada that extend to and encompass the preparation of material for consideration of the National Parole Board

He need not investigate if:

> d) the subject matter of a complaint has previously been investigated, or

e) in the opinion of the Commissioner, a person complaining has no valid interest in the matter.[3]

The function of the Correctional Investigator is that of an ombudsman. The Correctional Service is not required to follow his recommendations. However, since the Correctional Investigator submits an annual report to the Solicitor General of Canada concerning the problems that have been investigated and the actions taken in respect of such problems, and this report is made public, it is in the interests of the Correctional Service to take the appropriate action to remedy problems found by the Investigator.

In his Annual Report for 1978-79, the Correctional Investigator described the governmental mechanism for considering and resolving complaints made by inmates as follows:

> In dealing with inmate complaints we use the team approach whereby the entire staff is involved in the complaint processing procedure. Most of our initial contacts with inmates are through the letters which they send to the office. Each morning the mail is picked up at a post office box, opened and sorted. The complaint letters are then read, the salient points extracted and put into a résumé and attached to the inmate's file, unless it is a first contact in which case a file is opened. A daily mail meeting is then convened where each résumé is read and thoroughly discussed.
>
> Requests we receive for information are referred to an appropriate staff person for research and reply. Depending on the nature of the complaint and where possible, a decision is taken at this point as to whether or not: (1) we have jurisdiction, (2) the complaint is premature, (3) the grievance procedure should be used first or (4) it should be referred to another agency. In any case the letter is acknowledged as soon as possible, indicating to the inmate what further action he should take or what action we propose to take.
>
> If a decision is made to investigate the complaint it is then referred to the inquiries officer responsible for that institution, who in turn will usually arrange to meet with the inmate to further discuss and obtain a detailed account of the matter.
>
> Following this initial interview, institutional files will be consulted and other documentation reviewed. As well, further interviews with appropriate people will be conducted until

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3. Appointment of Ronald L. Stewart as Correctional Investigator P.C. 1977-3209 on November 15, 1977.

finally all the pertinent and necessary information has been gathered.

At this point, a conclusion is drawn and a decision made with respect to what action is now to be taken. If the complaint is found to be invalid or unsubstantiated the inmate is so informed. It might be that the complaint has some merit but is incapable of resolution, in which case this information is passed on to the inmate.

If we feel that there is sufficient merit in a particular complaint and that there is or should be a solution, an attempt is made to resolve it usually at the local level by asking that the matter be reviewed. If unsuccessful, we then climb the ladder of authority until we reach a sympathetic ear.

Most often these negotiations take place in an informal one-on-one situation with myself or the inquiries officer dealing with a director or other correctional staff person.

In the event that a consensus cannot be reached, or differing points of view cannot be resolved, my next avenue would be to submit a recommendation in writing to the Inspector General wherein I would describe the problem, set out all the relevant details and indicate the relief sought.

I should point out that frustrations do set in for the complainant as sometimes it might take several months to finally settle a matter one way or the other.

In any case, an attempt is made to keep the inmate informed on a regular basis of the progress we are making, and once a decision is reached the inmate is given that information. As is often the case, especially when dealing with a complicated or necessarily lengthy resolution procedure, the inmate may be seen on several different occasions in order to keep him abreast of what is happening. As well, if a recommendation is accepted, we continue to keep in contact both with the inmate and the staff person responsible in order to monitor its implementation.

Of course there is always a final appeal to the Minister in a situation where I might conclude that rejection of a recommendation was not based on sound reasoning.[4]

When the Correctional Investigator has recommendations to make, he submits them to the Inspector General, one by one, as problems arise. The Inspector General considers them, and if he decides to accept a recommendation then the wheels will be set in motion

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4. The Correctional Investigator, Annual Report of the Correctional Investigator 1978-79, Ottawa, 1980, Department of Supply and Services, pp 3-4.

and appropriate action taken to amend the pertinent directive or instruction to reflect the change in policy. On the other hand, if a decision is made rejecting the recommendation then reasons for so doing are to be given and the Correctional Investigator then can better assess what other action might be taken to resolve the problem. In such a case, the Correctional Investigator may use other recourses, including an appeal to the Minister.[5] During 1979-80, the Correctional Investigator received 1,427 complaints. As a result of these complaints, the Correctional Investigator's staff made 237 visits in forty different institutions, as follows: 136 visits to 15 maximum security institutions, 82 visits to 14 medium security institutions, and 19 visits to 11 minimum security institutions. During these visits, 705 inmates were met. Of the 1,427 complaints, most were withdrawn (122) or rejected as unfounded, premature or outside the Correctional Investigator's jurisdictions (932). A certain number are under review (58). In 43 cases, the Correctional Investigator resolved the complaint. In 202 other cases, he was of some assistance to the inmate. He was, however, unable to resolve 70 complaints, which were the objects of recommendations to the Canadian Correctional Service. Eighteen recommendations were submitted to the Inspector General during fiscal year 1979-80. Thirteen of these were accepted, four accepted in part and one was rejected.

4. Is there legislation requiring that convicted persons serve their sentences in an institution that is not too far removed from their place of residence?

The Canada Penitentiary Service and its provincial and territorial equivalents for inmates with sentences of two years less a day have a policy of incarcerating convicted persons in institutions located near their province of origin or residence, to the extent possible. However, administrative and security considerations, such as the inavailability of a place in a penitentiary, the lack of an institution in a particular province which would satisfy the requirements of the security classification given to a prisoner for the purposes of detention, or the conduct of a prisoner, sometimes make this impossible.

5. Would it be possible to define and distinguish among the following concepts: absolute discharge or discharge upon conditions; conditional discharge; free pardon or conditional pardon?

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5. Ibid, p. 1.

A person who is found guilty of a criminal offence or who pleads guilty may be subject to a fine or to a term of imprisonment or to both. However, in order to facilitate social reintegration of certain accused, Parliament has empowered judges in certain cases to grant an absolute or conditional discharge (Criminal Code, s. 662.1).

An accused sentenced to a term of imprisonment may be paroled after a portion of the sentence has been served, on the terms set out in the Parole Act, R.S.C. 1970, c. P-2, that is, authorization may be granted under this Act to an inmate to be at large during his or her term of imprisonment.

Finally, a free or a conditional pardon may be given to a person either by royal prerogative or pursuant to s. 683(2) of the Criminal Code. In theory, a person may be given a pardon by royal prerogative before being summoned to trial; this would have the effect in practice of preventing any prosecution. However, in practice, an individual will not receive a pardon by royal prerogative until after there has been a conviction. The power conferred on the Governor in Council by virtue of s. 683(2) of the Criminal Code can be exercised by the Governor in Council only in respect of people who have been found guilty of an offence. A free pardon implies that the person who receives the pardon is deemed never to have committed the offence in respect of which the pardon is granted. On the other hand, if a conditional pardon only is granted, such pardon, which would ordinarily have the effect of a commutation or of a remission of sentence, is only effective against the sentence. The conviction stands.

For more information on the above-mentioned concepts, Canada refers the Committee to pages 46 to 50 of its report.

ARTICLE 11

1. It is stated in the report that an insolvent debtor who has become bankrupt "is, nevertheless, liable to imprisonment if he has attempted to defraud his creditors". Is fraud itself, or simply the attempt, considered to be an offence?

An insolvent debtor who has become bankrupt and who attempts to defraud his or her creditors is liable to imprisonment. The attempted fraud, like fraud, is therefore an offence in itself.

ARTICLE 13

1. Are the provisions referred to in the Report of Canada applicable in cases of deportation, extradition or refusal of admission?

Under Article 13 in its report, Canada dealt with the provisions of the Immigration Act, 1976, S.C. 1976-77, c. 52, concerning the deportation of foreigners.

2. Can a person who has been refused permission to enter for financial (or any other) reasons appeal such a decision?

Only Canadian citizens, permanent residents and people registered under the Indian Act, R.S.C. 1970, I-6, have the right to enter Canada (Immigration Act, 1976, S.C. 1976-77, c. 52, s. 4). Entry into Canada is a privilege for any other person (s. 5).

In order to enter Canada, a visitor, student, worker or immigrant must obtain a visa (ss 9 & 10). If a visa officer, after receiving and assessing an application, refuses to issue a visa, the person in whose name the visa would have been issued cannot come to Canada (ss 9(1) and 10). The decision to grant or to refuse a visa is an administrative decision, and any refusal is not subject to judicial review (Bhadauria v The Minister of Manpower and Immigration (1978) 1 FC 229, at pp 231-231). However, if such a decision involved an abuse of discretion, for example, if made in bad faith or from consideration of discriminatory factors, the party who believed that he or she had suffered damages as a result can apply to have such a decision quashed by the Federal Court, Trial Division.

Where an immigration officer is of the opinion that it would or might be contrary to the Immigration Act, 1976 to admit presents himself or herself at a port of entry, he or she may cause that person to be detained and must allow the person to leave Canada forthwith or report the person to a senior immigration officer (s. 20(1)). If the senior immigration officer does not authorize such person to come into Canada, he or she must allow the person to leave Canada forthwith, or cause an inquiry to be held concering the person, as soon as circumstances permit. Before such departure or inquiry, the senior immigration officer may order the detention of the person or release the person subject to such terms and conditions as he or she may deem appropriate in the circumstances, for example, the payment of a security deposit or the posting of a performance bond (subsection 23(3)).

If the senior immigration officer orders that an inquiry be held, an adjudicator will preside. For more details on the inquiry,

including the right to appeal and the methods of judicial control, Canada refers the Commission to the comments made under Article 13 in its report.

3. What is the status of a person who holds a permit to remain in Canada issued by the Minister of Employment & Immigration pursuant to his or her discretionary power? Specifically, must such a person be considered not to be lawfully within Canadian territory, and thus not to be able to avail himself or herself of the protection provided in Article 13 of the Covenant? What rights does such a person have if the permit is cancelled?

Article 13 of the Covenant applies only to individuals who are lawfully in Canada. The holder of a Minister's permit, that is, a person who would not ordinarily have been entitled to be in Canada but who has been allowed to remain for a specific period not exceeding twelve months by the Minister of Employment & Immigration, is lawfully in Canada. However, if such a permit is cancelled or is not renewed, that person ceases to be lawfully in Canadian territory, and therefore may not rely on the protection of Article 13 of the Covenant. A person in such a situation is not without protection. The Minister of Employment & Immigration cannot abuse his or her discretion in cancelling or refusing to renew a Minister's permit. Failure by the Minister to act fairly and with legitimate reasons gives a person who suffers damages as a result the right to commence an action under s. 18(2) of the Federal Court Act, R.S.C. 1970, c. 10 (2nd supp) to have the decision set aside.

ARTICLE 14

1. Who is empowered to appoint and remove judges? How is the independence of the judiciary assured?

Judges at the federal, provincial and territorial levels are appointed by the Executive often after consultation with the Canadian Bar Associations for federal appointments or with the provincial or territorial Bench, for example, in Ontario, Saskatchewan, Newfoundland and the Northwest Territories. Generally speaking, they remain in office during good behaviour, although certain judges of lower courts, such as the judges of the Family Court in Nova Scotia, hold office during pleasure. With regard to Québec the procedure is described in the Regulation respecting the procedure for the selection of persons apt for appointment as judges adopted under the Courts of Justice Act and attached to the provincial part of this report.

In considering the power to remove judges, a distinction must be made between a judge of a superior court and a judge of a lower court. Parliament has the power to remove judges of the superior courts, with the exception of the judges of the County and District courts. There must be a joint address by the House of Commons and the Senate in order for the Governor General to remove such a judge. Other judges, including County and District court judges, whether appointed by the federal government or a provincial or territorial government, may be removed by the Executive which appointed them. Parliament, the provincial legislatures and the Commissioners in Council of the territories have no role in such cases.

However, the power to remove judges can be exercised only following an inquiry. Every jurisdiction has provided for an inquiry procedure of one or two stages.

A judge may only be removed from the bench if he or she is found guilty of misconduct. In practice, this means either an act of bad conduct or the fact that a judge cannot fulfil his or her duties or has placed himself or herself in a situation in which he or she cannot usefully carry out those duties. To these reasons can be added incapacity resulting from age or infirmity. Considering that the judiciary itself has a significant role in the inquiry procedures instituted by the various levels of government, governments do not seek to remove judges even if dissatisfied with the decisions some judges may render. In practice, it can be said that judges cannot be removed, except in cases of flagrant misconduct. For their part, judges who could be removed for misconduct prefer to resign.

Furthermore, the courts have several avenues available to rebuff and to discourage suggestions, pressure and threats that could be made by police, public servants, Ministers and even governments. These range from refusal to hear a witness to conviction for contempt of court, and includes public denunciation. Finally, if the decisions of the lower courts appear to the superior courts

to be affected by prejudicial factors because the decisions were made under the influence of the government, the superior courts at the request of the injured party, may set them aside.

2. Would it be possible to obtain more details on the exceptions in Canadian law to the right to a public trial?

Canada indicated in its report that "the right to a public trial is one of the fundamental features of the Anglo-Canadian legal system, in civil as well as in criminal matters". Except for those cases in which in camera trials may be ordered, every individual, whether or not he or she is a Canadian, has the right to a public trial.

In criminal matters, this principle has received constitutional sanction. In effect, subsection 11(d) of the Canadian Charter of Rights and Freedoms recognizes that any person charged with an offence has the right to a public hearing. Any such person whose right has been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. This provision does not apply in Québec where the government relied on Charter section 33 (the notwithstanding clause). The Québec Charter of Human Rights and Freedoms, however, recognizes the right to a public hearing before administrative, civil and criminal tribunals in matters coming within provincial jurisdiction (Charter, section 23).

A person who is deprived of a public trial, or who is refused access to a trial, may contest the decision of the judge before the superior courts. Thus in the decision in R v Quesnel and Quesnel, (1980), 51 C.C.C. (2d) 270, the Ontario Court of Appeal quashed the conviction of the accused on the ground that the judge had exceeded his jurisdiction in ordering a completely closed trial. Even though some witnesses in a case in which the defendants were accused of indecent assault on a female person, gross indecency and having sexual relations with a female person of under 14 years were minors, the public should not have been excluded totally. The judge could have ordered the public excluded when these witnesses were giving testimony. In FP Publications (Western) Limited and the Queen (1980), 51 C.C.C. (2d) 110, the Court of Appeal of Ontario quashed an order of a court of first instance excluding a journalist employed by a newspaper. The order was based on the fact that the newspaper had disclosed the names of people who had frequented a bawdy house, which could have embarrassed other witnesses and persuaded them not to testify. The Court of Appeal held that the embarrassment that some witnesses might suffer if their names were revealed did not justify a restriction on the freedom of the press.

In order for the legislature to restrict or abolish the right to a public trial, it must clearly express its intention to do so (R. v B.; B. v Kimelman, (1980), 6 W.W.R. 177, at 180). Trials are therefore open to the public and the press, except in cases in which in camera trials are required. Only the physical limitations of the location can limit access.

Although the basic principle is that trials in court are open to the public, there are exceptions to this principle. In certain exceptional cases, based on power conferred on them by the common law, the courts may order that the public be excluded if the presence of the public would hinder the administration of justice. For example, a court may sit in camera when it decides that the presence of the public would be prejudicial to testimony or prevent people from testifying, would result in the disclosure of secret processes or documents, is necessary to protect the mentally ill and wards of the court or would present risks to public safety.

Some jurisdictions have codified, in whole or in part, the power of judges to exclude. Thus in Québec, Article 13 of the Code of Civil Procedure provides that a "court may order that (trials) be held in camera if it considers this necessary: (1) in the interests of good morals or public order; (2) in the interests of the children in the case of divorce proceedings, or of actions in separation from bed and board, in a declaration of disavowal of paternity, or in an annulment of marriage". The right of a court to make such an order is recognized in s. 23 of the Québec Charter of Human Rights and Freedoms. By virtue of s. 52 of the Charter, s. 23 prevails over any legislation contrary to the Charter enacted after June 28, 1976, unless such legislation expressly states that it applies despite of the Charter. Once Bill 86 (An Act to Amend the Charter of Human Rights and Freedoms) is put into force this prevalence will apply to all Québec laws.

In federal law, Parliament has codified the power of judges to order an in camera trial in criminal matters. By virtue of s. 442(1) of the Criminal Code, when the presiding judge, magistrate or justice in any proceedings against an accused that is a corporation or a person sixteen years of age or more is of the opinion "that it is in the interest of public morals, the maintenance of order or the proper administration of justice to exclude all or any members of the public from the court room for all or part of the proceedings, he may so order".[6] Moreover, in a case in which the accused is charged with rape, sexual relations with a female person under the age of 14 years who is not his wife, or of indecent assault on a female person, s. 442(3) of the Code requires the court to order a publication ban on the complainant's identity and evidence if the prosecution so asks.

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6. On the same point, see s. 465(1)(j) of the Criminal Code, concerning preliminary inquiries.

It should also be noted that Parliament has taken measures to protect minors. Pursuant to s. 12(1) of the Juvenile Delinquants Act, R.S.C. 1970, J-3, the trial of a child accused of an offence against a federal or provincial statute, a territorial order or a municipal by-law must take place without publicity, separately and apart from the other accuseds. Similarly, s. 441 of the Criminal Code provides that when an accused is or appears to be under the age of sixteen years, his trial shall take place without publicity, whether he is charged alone or jointly with another person. In its decision of October 20, 1981, the C.B. v The Queen and C.B. v Kimelman et al, the Supreme Court of Canada decided that Parliament, by enacting these provisions, had ordered that the trials referred to in these sections would take place in camera.

In Re section 12 of the Juvenile Delinguents Act, (1982) 8.W.C.B. 206, Judge Smith of the Ontario High Court declared subsection 12(1) of the Juvenile Delinguents Act, which requires in camera hearings in certain circumstances, to be inoperative. This section was found to be contrary to the freedom of expression and the press and the right to a public hearing in criminal matters, as recognized in subsections 2(b) and 11(d) of the Canadian Charter of Rights and Freedoms. According to Judge Smith, it is for the Courts to decide, based on principles of Common Law or on standards adopted by Parliament, whether a closed hearing is justified in a given case. As an example, he referred to the new Young Offenders Act, S.C. 1980-81-82, c. 110. This Act, not yet proclaimed in force, authorizes a judge to exclude from the court room any person, except those required by law, where necessary in the interest of public morals, the maintenance of order or the proper administration of justice or where any evidence or information presented to the court would be seriously injurious or prejudicial to a child or young person (section 39).

Finally, it should be noted that in cases in which it is not ordered that a trial be held in camera, the Code provides, in order to protect the accused, that certain information shall not be published or broadcast. Section 470 prohibits publication or broadcast of any admission or confession made by the accused and tendered at a preliminary inquiry unless he or she is discharged or, if he is committed for trial, before the inquiry has ended. In jury trials section 576.1 prohibits, when the jury is not sequestered, the publication or broadcast of any information concerning any portion of the trial at which the jury is not present, before it retires to consider its verdict. In addition, the Code permits and in certain cases requires the presiding judge at trial to prohibit publication or broadcast of certain information in order to protect the victim or the accused. For example, s. 442(3) of the Code requires a judge in a case in which the accused is charged with rape, having sexual relations with a female person under the age of 14 years who is not his wife, or indecent assault on a female person, to make an order

directing that the identity of the complainant and her evidence taken in the proceedings shall not be published or broadcast, if application therefore is made by the prosecutor.

Furthermore, under s. 14(2) of the Official Secrets Act, R.S.C. 1970, c. O-3, the Crown may request that all or part of the public be excluded during part of the hearing, on the ground that the publication of any testimony or any statement would be contrary to the state's interests. The court may then make such an order, but the sentence should be pronounced in public in all cases.

The Canadian Charter of Rights and Freedoms must be taken into account, when considering the right to a public hearing. Subsection 11(d) recognizes the right of any person charged with an offence to a public hearing. Section 1 of the Charter, however, permits the right to be restricted by "such reasonable limits prescribed by law as can be demonstrably justified in a free and democractic society". Naturally, the State would have to justify such a restriction.

3. Questions relating to the presumption of innocence

a) May the Crown refrain from prosecuting an individual but state publicly that it considers such person to be guilty?

In Canadian law, a person accused of a criminal offence is presumed to be innocent (Canadian Charter of Rights and Freedoms, subsection 11(d); Québec Charter of Human Rights and Freedoms, section 33). The Crown has the responsibility of proving guilt beyond a reasonable doubt. If the Crown believes that it is impossible to do so, in view of the situation, it may not decline to prosecute and at the same time, state publicly that it considers a person to be guilty. To state that a person is guilty of a criminal offence when he or she has not been found guilty by the courts constitutes defamation. As a result, the victim would have the right to bring an action for damages. The same rules naturally apply to police forces and members of the public, including the press.

b) May an accused person plead guilty?

While the Crown may consider it inadvisable to prosecute a person because it does not believe that it could obtain a conviction, an accused also may believe that the evidence against him or her is such that a conviction must result. In such a case, he or she may plead guilty.

When an accused pleads guilty, he or she has the right to speak

to sentence. If a court refuses to let him or her be heard before sentencing, the accused will be thus deprived of the right to a fair hearing, as guaranteed by subsection 11(d) of the Canadian Charter of Rights and Freedoms and, in Québec, by section 23 of the Charter of Human Rights and Freedoms. If this right is not respected, a court of appeal could overturn the sentence and return the matter to the trial court for new sentencing after having given the accused the opportunity to speak either personally or by someone on his or her behalf. (Lowny and Lepper v. R., (1977), S.C.R. 195 at pages 201 and 204).

In practice where an accused pleads guilty, the presiding judge asks the accused if he or she has something to say before being sentenced. His or her lawyer, as well as the Crown prosecutor, will be given the opportunity to speak to sentence. Federally, this rule has been codified for offences punishable by way of indictment, but not for summary conviction offences. Section 595 of the Criminal Code sets out that the judge shall ask the accused whether he or she has anything to say before sentence is passed. It should be noted, however, that an omission to comply with this section does not affect the validity of the proceedings.

For certain minor federal, provincial and territorial offences, particularly those relating to highway traffic, a person may plead guilty and pay a fine without appearing in court.

c) In criminal cases, when the accused is acquitted, must the accused pay the costs of the legal proceedings?

In criminal cases, there are no legal costs, except in matters of prosecutions by summary conviction. Under s. 744 of the Criminal Code, an accused who is acquitted at trial is not required to pay costs. However, if the conviction is appealed, the summary conviction appeal court or, if the accused proceeds by way of stated case, a superior court of criminal jurisdiction may make any order with respect to costs that it considers just and reasonable (s. 758; s. 766(2)). If the case is then taken to a provincial court of appeal, that court has the same power (s. 771(3)). In such cases, an order to pay costs is not determined by the success or failure of the proceedings (R v Ouellette, (1980) 111 DLR (3d) 216, at 223). However, in practice, if one of these courts orders payment of costs, ordinarily it will be the losing party who will be required to pay costs. There will therefore be little possibility that an accused who is acquitted on appeal will be required to pay court costs.

4. Who controls the activities of the police?

Police forces, whether they be the Royal Canadian Mounted Police, the Ontario Provincial Police, the Québec Police Force or a municipal or regional police body, are subject to administrative and judicial control.

At the administrative level, the police are free to investigate crimes and any actions that may be contrary to the laws of the land; in this respect, the police are independent of the Executive. However, although in practice the State does not attempt to intervene in police decisions concerning investigations and prosecutions in individual cases, this does not mean that the police are not subject to any control. Police forces must obey the governments, which are themselves responsible to the legislative bodies or municipal councils elected by the people. Specifically, police bodies may receive directives from the competent civil authorities. However, it should be noted that such directives do not generally deal with investigations, arrests and prosecutions, but deal rather with the administration and management and broad policies of these bodies. In the matter of investigations, ordinarily governments do not order police forces to cease any investigations that they are engaged in, but rather may at times request that the police forces undertake investigations in certain cases.

In addition to administrative control, police forces are subject to judicial control. In a democratic state, the police must never place themselves above the law. If a police officer commits a criminal offence in the performance of his or her duties, he or she may be prosecuted in the criminal courts. In addition, any person who is the victim of such an act may bring civil proceedings. However, the realities of the situation limit considerably the scope of the control exercised by the civil and criminal authorities.

> "There does not appear to be a strong tradition in Canada of the civil courts being used by private citizens as a means to curb police transgressions. The cost alone of such civil action is likely to deter all but the exceptional person. Neither is it sufficient to invoke the right to private prosecutions without also pointing out the statutory powers of the Crown to take over such private prosecutions and to determine whether to press forward with the case or to enter a stay of proceedings."[7]

This situation, together with the doubts that some groups have as to the impartiality and effectiveness of internal controls within the police forces, have resulted over the past few years in several provinces and municipalities creating ombudsman or quasi-ombudsman positions, in the form of civil review boards, or

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7. Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, Second Report: Freedom and Security under the Law, Ottawa 1981, Department of Supply and Services, Vol. 2, p. 1007, para. 6

control mechanisms for investigating complaints received from citizens against police forces within their jurisdiction, and making corrections where possible. At the federal level, the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police found that "the present RCMP public complaints procedures go some distance in providing for the just disposition of a complaint". However, it concluded the improvement could be made, and made proposals for certain such improvements.[8]

5. What happens when a person who does not speak either of the two official languages of Canada, that is, English or French, is summoned to trial?

When an accused does not understand the language in which the trial is taking place, he or she has the right to an interpreter. In Anglo-Canadian law, the accused must not only be physically in court, but he or she must be present mentally also, which is impossible if he or she does not understand the language in which the trial is taking place. Section 14 of the Canadian Charter of Rights and Freedoms sets out, "A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter." Anyone whose right has been violated at a civil, criminal or administrative proceeding may apply to a court of competent jurisdiction to have the trial decision quashed. In the decision in Leiba v The Minister of Manpower and Immigration, (1972) SCR 660, the Supreme Court of Canada quashed a deportation order made under the Immigration Act and ordered a rehearing of the apellant's case in view of the fact that the appellant has been admitted to Canada as a permanent resident. The basis of the decision was that the government had neglected to provide an interpreter to the appellant at the original inquiry relating to the application for admission contrary to s. 2(g) of the Bill of Rights. This provision of the Bill of Rights is similar to section 14 of the Charter.

In Québec, where section 14 does not apply to provincial laws, section 36 of the Charter of Human Rights and Freedoms recognizes the right of every accused person to be assisted free of charge by an interpreter if he or she does not understand the language used at the hearing. Furthermore, Bill 86 (An Act to Amend to Charter of Human Rights and Freedoms, sanctioned on December 18, 1982), extends this right to the deaf.

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8. Ibid, p. 970, para. 13.

6. In Rourke v The Queen, (1978), SCR 1033, the Supreme Court of Canada stated that courts of criminal jurisdiction could not rely on the theory of abuse of process to indefinitely stay proceedings which could cause prejudice to the accused because of excessive delay in the Crown's conduct of the prosecution. Has this decision been followed?

In Canada, subsection 11(6) of the Canadian Charter of Rights and Freedoms recognizes the right of any person charged with an offence to be tried within a reasonable time. Since a person charged with an offence may now have a decision quashed where the trial did not take place within a reasonable time, the Rourke case has lost a large part of its probative value. Whether this decison will continue to be followed will depend on how section 11 of the Charter is interpreted. In particular, will section 11 apply to facts similar to those in Rourke, i.e., where an accused asks the court not to proceed with the trial for the sole reason that the police without a reasonable excuse delaid too long before laying a charge. At this time, it is impossible to answer this question in view of the absence of Canadian decisions on this point, it should be noted, however, that in Grant v. Director of Public Prosections, (1982) A.C. 190, at p. 200, the Judicial Committee of the Privy Council interpreted a provision of the Jamaican Constitution similar to subsection 11(6) of the Charter. The Court concluded that a delay of three and a half years from the time of the offence to the beginning of the trial would not have given rise to an impartial hearing, except for the fact that the accuseds were responsible for two thirds of this delay by their legal manoeuvering. If this decision is followed in Canada, Rourke will have no probative value.

In Québec, section 32.1 of the Charter of Human Rights and Freedoms, inserted following the adoption of Bill 86, will recognized this right.

7. How is the right to counsel protected in Canada?

In both civil and criminal matters, an individual is free to appear in court without counsel. However, this practice should be discouraged, in view of the complexity of the law and of procedure. It is obvious, however, in looking at the cost of lawyers' services, which is generally considered as being high, that low-income people cannot always retain the services of a lawyer. For this reason, the provincial governments have established legal aid programmes funded by the public purse[9] for

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9. The provinces receive financial assistance from the federal government for legal aid in criminal cases.

civil and criminal matters. These programmes permit low-income people to retain the services of a lawyer, without cost, or at modest cost, depending on their financial situation.

In criminal matters, the Canadian Charter of Rights and Freedoms recognizes the right of any person charged with an offence to a fair and public hearing (s. 11(d)). Even though this right does not imply de jure the right to a lawyer, the Supreme Court of Canada, in Barrette v. R. (1977) S.C.R. 121, at page 127, ruled that "if the offence was serious enough to warrant a sentence of six months imprisonment, it was serious enough to warrant that the appellant be allowed to be defended by a lawyer if he so wished." As already indicated, an accused who can not pay for a lawyer has the right to legal aid. In certain cases, however, the legal aid administration can decide whether the individual needs a lawyer. The court can therefore proceed to the trial of the accused without him or her being represented by a lawyer, as long as the right to a fair hearing is not infringed (Re Ewing and Kearby and the Queen (1975), 18 C.C.C. (2d) 356). To determine whether this right has been respected, reference may be made to the criteria set out in Barrette. If an individual's right to a fair trial is denied because he or she does not have a lawyer, a court of appeal may quash the conviction and order a new trial (Barrette v. R. op.cit., p. 127). In Québec, where subsection 11(d) does not apply to provincial laws, the situation is clearer. Section 34 of the Charter of Human Rights and Freedoms recognizes the right of every person to be represented by an advocate or to be assisted by one before any trial.

The right of an accused to a lawyer is not absolute. For example, he or she may not dismiss his or her lawyer before or during the trial for derisive reasons and then ask for an adjournment. In such a case, the court may ask the accused to defend himself or herself. It could also ask the lawyer to continue to defend the accused. Even if the accused expressly objects, the lawyer's mandate would be considered to continue (Spataro v. R. (1974) S.C.R. 253 at pages 257-258).

8. May Parliament enact legislation providing for heavier sentences for repeat offences?

In Canadian criminal law, Parliament, provincial legislatures and the Commissioners in Council of the territories may enact such laws. For example, reference may be made to s. 234 of the Criminal Code, by virtue of which a person sentenced for driving a motor vehicle while his ability to drive is impaired by alcohol or drugs is liable:

a) for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or both;

b) for a second offence, to imprisonment for not more than one year and not less than fourteen days; and

c) for each subsequent offence, to imprisonment for not more than two years and not less than three months.

Similarly, s. 107 of the Act respecting the Commission de contrôle des permis d'alcool, provides that anyone selling alcoholic beverages in Québec without a licence or authorization from the Commission is liable

for the first offence, to a fine of not less than two hundred dollars nor more than one thousand dollars, and, for a second offence and any subsequent offence, to imprisonment for a term of three months, which the court may reduce to one month.

9. Article 14, para 7 of the Covenant states that "no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country".

In view of this provision, how can it be explained that by virtue of s. 20(3) of the Juvenile Delinquents Act, R.S.C. 1970, c. J-3, a court for juvenile delinquents that has adjudged a child to be a juvenile delinquent may, in any case in which it has reserved jurisdiction over the child, review the decision that it had previously made and refer the child to the courts of criminal jurisdiction as a result of such review?

The principle set out in Article 14, para 7, is not subject to any exception. Therefore, by acceding to the Covenant, Canada cannot assume the right to derogate from it except in the cases and according to the methods set out in Article 4. To this end, subsection 11(h) of the Canadian Charter of Rights and Freedoms set out that any person charged with an offence has the right if finally acquitted of the offence, not to be tried again and, if finally found guilty and punished for the offence, not to be tried or punished for it again. However, in certain cases, what appears to be a derogation may not be. Thus, it may be asked whether s. 20(3) of the Juvenile Delinquents Act contravenes the Covenant. By virtue of this section, a judge of a court for juvenile delinquents may order that a juvenile delinquent under the age of twenty-one years who has committed an indictable offence and for which he or she has been convicted by a court for juvenile delinquents be transferred to an ordinary law court, if the judge believes that it would be for the child's own good and in the best interests of the community. The system under which a child is judged by a court for juvenile delinquents is an exceptional system for the protection of the child. However, the

system is only applied in certain conditions. One of the conditions is set out in s. 20(3). If a child by his or her conduct shows that he or she has not taken advantage of the opportunity offered, this section permits the case to be sent before the courts that would have ordinarily had jurisdiction.

Parliament recently adopted the Young Offenders Act, S.C. 1980-81-82, c. 110. Once proclaimed, this Act will abolish the Juvenile Delinquents Act (section 80). In the Young Offenders Act, however, the legislation recognizes that where a young person has wilfully contravened a disposition made pursuant to the Act, the youth court may vary the disposition (section 33). In this regard, the Young Offenders Act, even though less severe than the Juvenile Delinquants Act, follows the same principle: the sentence imposed on a youth, is conditional and if its terms are not respected, the punishment is subject to review.

ARTICLE 15

1. Can a legislative body in Canada enact retroactive legislation in an area other than criminal law? Have Parliament, the provincial legislatures or the Commissioners in Council of the territories enacted retroactive legislation in the past?

In Canada, retroactive legislation is the exception rather than the rule. This type of legislation is rare in practice. Ordinarily, such legislation is enacted because it is required in the circumstances, or because its adoption brings some benifit. Thus, following the decision of the Supreme Court of Canada in Attorney General of Québec v Blaikie et al, (1979) 2 S.C.R. 1016, in which it was held that the French and English versions of the legislation enacted by the National Assembly of Québec, together with the regulations passed under these laws, had the force of law, the National Assembly enacted the Act respecting a judgement rendered in the Supreme Court of Canada on 13 December 1979 on the language of the legislature and the courts in Québec. This Act gives the force of law retroactively to the English versions of the statutes and regulations enacted since the Charter of the French Language, R.S.Q. 1977, c. C-11, took effect. However, it should be noted that taxation statutes are frequently retroactive. A number of taxation provisions take effect when they are announced, even though they are only enacted later. In addition, if the legislature considers it necessary, it may at times remedy defects or weaknesses in taxation legislation by amending it retroactively.

The Canadian Charter of Rights and Freedoms protects Canadians against retroactive penal legislation. Subsection 11(g) sets out, "Any person charged with an offence has the right ... not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations." Any law contrary to this provision would be of no force or effect, unless it could be justified according to section 1 (section 52).

In Québec, an equivalent provision (s. 37.2) was inserted into the Charter of Human Rights and Freedoms through the adoption of Bill 86 (An Act to Amend the Charter of Human Rights and Freedoms), sanctioned on December 18, 1982, but not yet in force at the time of preparing this report.

It will be interesting to see what effect this kind of provision will have on penal provisions in federal and provincial laws. As we have already noted, these laws are sometimes retroactive. For example, what effect will it have on tax measures which take

effect from their introduction in the House of Commons? Refusing to conform to the measures is an offence, even if they are not yet law. Will the courts consider the economic, administrative and social implications of the tax meaures, justifying an immediate application of the law? Will they force governments to incorporate notwithstanding clauses into their tax laws? Rather, will governments adopt laws giving effect to tax laws as soon as they are introduced even though not adopted until later?

ARTICLE 16

1. Is the principle that "a child is considered to have been born from the time of conception" recognized in estate law?

Refer to the provinces.

2. Does Canadian law recognize the concept of civil death?

Refer to the provinces.

ARTICLE 17

1. Does Canadian legislation give a broad interpretation to Article 17 of the Covenant?

When Canadian authorities interpret the provisions of the Covenant, they attempt to give them a reasonable interpretation. It is difficult at times to implement abstract principles such as those set out in Article 17. For this reason, the authorities consult international case law and jurisprudence, particularly relating to the European Convention on Human Rights, in order to determine what the implications of the various provisions of the Covenant are.

2. Is shooting at police officers who are searching a house without a warrant permitted?

Under s. 40 of the Criminal Code, "everyone who is in peaceable possession of a dwelling-house, and everyone lawfully assisting him or acting under his authority, is justified in using as much force as is necessary to prevent any person from forcibly breaking into or forcibly entering the dwelling-house without lawful authority". In addition, s. 41(1) provides that "every one who is in peaceable possession of a dwelling-house or real property and everyone lawfully assisting him or acting under his authority is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove a trespasser therefrom, if he uses no more force than is necessary".

Moreover, under s. 38 of the Code, everyone who is in peaceable possession of movable property is justified

a) in preventing a trespasser from taking it, or

b) in taking it from a trespasser who has taken it,

if he does not strike or cause bodily harm to the trespasser. If the person in peaceful possession lays hands on his or her property, but the trespasser persists in keeping the property or taking it back, the trespasser is then deemed to have committed an unjustified assault against that person. In such a case, he or she may use as much force as is necessary, and not excessive force, to take his or her property back again.

A police officer who unlawfully enters[10] an individual's home may be told to leave the premises, and may be removed like any other trespasser if he or she refuses to leave (R v Lyons, (1892) 2 C.C. 218.). In order to effect the removal, the person in possession of the premises or the person assisting such person may use force, but the force used must not be greater than what is necessary in the circumstances (R. v. Kinnon, (1911) 18 C.C.C. 139). At first glance, it would not appear reasonable to use a firearm against police officers who are conducting an unlawful search. However, the circumstances of the case may show that the use of such a weapon was not unjustified.

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10. (Trans) "The home or "dwelling-house" of every citizen is inviolable. No one has the right to enter it by force or by breaking in, except in the cases provided by law:

    a) arrest without warrant for an indictable offence(449(a));
    b) execution of a warrant for arrest against
       1 - an accused (459, 526, 728);
       2 - a witness (626, 631, 633);
    c) execution of a search warrant (181, 182, 443-446, 447);
    d) execution of civil process (118(6); Code of Civil Procedure".

    (Irénée Lagarde, Droit pénal canadien, Montréal, 1962, Wilson et Lafleur, p. 91).

ARTICLE 18

1. Is there a policy in Canada intended to encourage harmony among religions, since without religious tolerance, legislation has little effect?

There are no government programmes intended to encourge harmony among religions. There is, in fact, no antagonism in Canada among the various religious groups. However, in order to counter intolerance that might be suffered by members of a religious community, all Canadian governments have enacted anti-discriminatory legislation prohibiting discrimination on the basis of religion in matters of employment and in the provision of goods, services and accomodation.

2. The Lord's Day Act recognizes the sacred nature of Sunday, a day that is a religious holiday for Christians. Is this not discriminatory? Would it not be preferable to restrict treatment of Sunday to declaring that it is a holiday for all citizens?

The Lord's Day Act, R.S.C. 1970, c. L-13, was enacted to protect the sacred nature of Sunday. A secondary goal was to grant a holiday to workers. Today, some would say that this second goal is foremost. It would undoubtedly be useful for Canadian law to recognize this reality. This would require a joint federal-provincial effort. Although the federal government has jurisdiction to prohibit work on Sunday for religious reasons, generally it is the provinces that have jurisdiction if for non-religious reasons, work is prohibited and workers are given a holiday.

3. Would it be possible to obtain further information about the provisions of the Nova Scotia Education Act and the Ontario Education Act, which appear to be discriminatory in the area of religious convictions? In its report, Canada indicates that a provision of the Nova Scotia Education Act requires teachers to educate children in accordance with principles of Christianity, and that in Ontario the Education Act requires that teachers instill respect for religion and Judaeo-Christian moral principles.

Refer to the provinces.

ARTICLE 19 AND 20

1. Is discrimination on the basis of political or other opinion prohibited?

In Canada, the Canadian Charter of Rights and Freedoms renders inoperative all laws which result in discrimintion against an individual because of his or her political views and opinions, as long as such laws are neither reasonable or justifiable in a free and democratic society. Section 2 of the Charter recognizes the right of everyone to the freedom of thought, opinion, expression and association. Furthermore, section 15 which will come into force on April 17, 1983 sets out, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without exception."

These two provisions do not apply in Québec. The Charter of Human Rights and Freedoms, however, prohibits all distinction, exclusion or preference based on political opinion in matters of employment and provision of goods, services and accommodation ordinarily offered to the public. To the extent that they conflict with this prohibition, all laws adopted after June 27, 1975 are inoperative (sections 10 to 20, and 52). Upon the entry into force of Bill 86 (An Act to Amend the Charter of Human Rights and Freedoms) this prohibition will apply to all Québec laws.

Federally, while awaiting the coming into force of section 15 of the Charter, an individual may rely on the protection in the Canadian Bill of Rights. In effect, by virtue of the Bill of Rights, all laws which deny or are applied so as to deny the right to equality before the law and the protection of the law are inoperative (sections 1(b) and 2). As well, discrimination on the basis of opinion is prohibited in matters concerning access to the public service. The merit principle governs the choice and promotion of public servants (Public Service Employment Act, R.S.C. 1970, D-32, s. 10). In addition, the Canadian Employment and Immigration Commission must ensure that there is no discrimination on the basis of political opinion among workers referred to potential employers (Unemployment Insurance Act, 1971, S.C. 1971-72-73, c. 48, s. 139(2)(b)). It should be noted, however, that while, at the governmental level, discrimination based on political opinion is prohibited, this is not the case in the private sector. In effect, the Canadian Human Rights Act does not prohibit discrimination on the basis of opinion, with the exception of cases involving religious beliefs.

2. Does the Canadian government recognize that it has an obligation to encourage freedom of expression?

Freedom of speech is one of the foundations of Canadian society. The federal government, along with those of the provinces and territories, recognize that Canadian society requires that all citizens be able to express their opinions if society is to develop fully. It is not important that such opinions may be contradictory, that they may be critical of governments and their policies or that they may receive only limited support from the public. As long as certain standards of public order are observed, individuals have the right to express their opinions, whether individually or in groups.

At the federal level, Parliament has enacted the Canadian Bill of Rights. This legislation protects freedom of speech and expression. By virtue of the Bill of Rights, any law that abrogates, abridges or infringes these freedoms is inoperative (s.s. 1(d)and (f) and 2). Moreover, there is no federal law that authorizes censorship of newspapers and periodicals. In broadcasting, Parliament has expressly provided in s. 3(d) and (g) of the Broadcasting Act, R.S.C. 1970, c. B-11, that the objectives of the Canadian broadcasting system (public and private sectors) and of the national broadcasting service (public sector) are to give expression to the diversity of views and opinions existing in Canada.

3. How does freedom of expression operate in the area of the press and publishing? Is state approval required to start up a newspaper or periodical?

With the exception of foreign investments, which are subject to the control of the Foreign Investment Review Agency, the approval of the federal government or of the provincial or territorial governments is not required to start up a newspaper or periodical. At the federal level, the government encourages Canadian periodicals. For this purpose, it may be noted that under s. 19 of the Income Tax Act, R.S.C. 1952, c. 148, the costs of advertising for the Canadian market in a non-Canadian newspaper or periodical may not be deducted from the income of an individual or a corporation.

4. May decisions made concerning the censorship of films be contested?

Refer to the provinces.

5. In Canadian criminal law, ss 60 and 62 of the Criminal Code prohibit seditious words and acts. What is meant by the concepts of seditious words and acts? Have these expressions been interpreted by the courts?

The concept of sedition and its implications were set out clearly and succinctly in an introductory course on security and intelligence prepared by the Royal Canadian Mounted Police and given in November 1970:

> Some earlier decisions suggest that an intention to promote feelings of ill-will and hostility between different classes of subject in itself would establish a seditious intention. This proposition seems to have been clearly rejected by the Supreme Court in BOUCHER v. R. (1951) S.C.R. 265). In this respect Rand, J. stated:
>
> "There is no modern authority which holds that the mere fact of tending to create discontent or defamatory feelings among His Majesty's subjects or ill-will or hostility between groups of them not tending to issue in illegal conduct, constitutes the crime and this for obvious reasons."
>
> This decision clearly establishes that to be guilty of sedition a person must have an intention to incite others to violence or disorder against the government. The creation of violence or disturbance of some nature, must be evident to show a seditious intention. Whether in fact a disturbance takes place is immaterial. The crux of the matter is whether or not the words themselves suggest the intention to incite violence. A person could therefore be convicted of sedition on the evidence of the words alone and no other overt act may be required.
>
> A difficulty may arise in the case of particulary critical remarks directed against the goverment. The right of an individual to criticize government is a recognized democratic right in this country. This right is emphasized and protected by section 61 of the Criminal Code. This section provides in effect that a person should not be deemed to have a seditious intention by reason only that he intends in good faith to point out certain fallacies in government policy or government action.
>
> The problem is to determine the line of demarcation between bona fide criticism of the government and an actual seditious intent. The judge or jury must determine what in fact was the real purpose of the statement. Do the words seditious intention, themselves suggest incitement to violence? If they do, the necessary element in sedition, is evident. If the real purpose was honest criticism directed towards government policy or action with no seditious intention then

no offence has been committed. This distinction was expounded in the judgment of Lord Chief Justice Coleridge in Rex v Aldread (1904) Cox. C.C.1 where he stated:

> "A man may lawfully express his opinions on any public matter however distasteful, however repugnant to others, if, of course, he avoids anything that can be characterized either as blasphemous or as an obscene libel. Matters of State, matters of policy, matters even of morals--all these are open to him. He may state his opinion freely, he may buttress it by argument, he may try to persuade others to share his views. Courts and juries are not the judges in such matters. For instance, if he thinks that either a despotism, or an oligarchy or a republic or even no government at all is the best way of conducting human affairs, he is at perfect liberty to say so. He may assail politicians, he may attack governments, he may warn the executive of the day against taking a particular course or he may remonstrate with the executive of the day for not taking a particular course, he may seek to show that rebellions, insurrections, outrages, assassinations, and such-like are the natural, the deplorable, the inevitable outcome of the policy which he is combatting. All that is allowed, because all that is innocuous; but on the other hand, if he makes use of language calculated to advocate or to incite others to public disorders, to wit, rebellions, insurrections, assassination, outrages, or any physical force or violence of any kind, then, whatever his motives, whatever his intention, there would be evidence on which a jury might, on which I should think a jury ought, and on which a jury would decide that he was guilty of a seditious publication."

In closing, it should be noted that charges of sedition are extremely rare in Canada.

6. Questions relating to radio and television broadcasting:

a) Why has Canada adopted a national broadcasting policy, the purpose of which is to ensure the protection and enrichment of Canadian culture and the strengthening of the political, social and economic structure of the country? How is this policy implemented?

The national policy is intended to reinforce the political, social and economic structure of the country. Like all States, Canada is not immune to political and socio-economic tensions. However, the situation is complicated here by the fact that this is a federal state. Within the federation, provincial governments defend the interests of people in their own jurisdictions, strenuously at times, as is their right and duty.

This has the effect of increasing the tensions within the federation. The national broadcasting policy must be considered in this context in political, social and economic terms. This policy is not intended to hide the fact that these tensions exist, but rather to inform Canadians about them and about the causes of such tensions. By assisting Canadians to know and understand better the problems faced by the inhabitants of the various regions, and also the advantages of the federal system, the policy is intended to reinforce feelings of national belonging.

A second objective of the national policy is to promote Canadian culture. As a country, Canada believes that it can only benefit from cultural contributions from the outside. However, such contributions should add to the national culture; they should not submerge or replace it. In Canada, the cultural influence of the United States is significant, not to say preponderant. It is therefore the responsibility of the federal government to ensure that Canadian culture is protected. Today, radio and television broadcasting are among the primary instruments for promoting culture, and so there is a national policy in this area, one of the goals of which is to encourage the development of the national culture. For this reason, the Canadian Radio Television and Telecommunications Commission has adopted regulations requiring that a certain percentage of programming be of Canadian origin. (Radio Broadcasting Regulation, C.R.C. 1978, c. 379, s. 12; Television Broadcasting Regulation, C.R.C. 1978, c. 381, s. 8). This policy is intended to encourage Canadian artists and producers.

Even though broadcasters are subject to the national broadcasting policy, section 3, paras (d) and (g) of the Broadcasting Act enshrines the independence not only of private radio and television broadcasters, but also of public broadcasters, whether they be the Canadian Broadcasting Corporation or provincial broadcasters. The Canadian Broadcasting Corporation is established as an independent corporation under Part III of the Broadcasting Act. By virtue of this statute, the corporation is independent and is not subject to State control, except in matters of financing (ss 3(g), 39(1) and 45)). Order in Council P.C. 1972-1569 of July 13, 1972, which permits the establishment of provincial public radio broadcasting corporations, such as Radio-Québec and TV Ontario, requires that they as well be independent.

Furthermore, the Canadian Radio Television and Telecommunications Commission has the power to hold an inquiry and, if necessary, to suspend or revoke a radio broadcasting licence if a citizen complains that the programming of a private or public broadcaster is not independent or impartial, and such an inquiry is public (s.s. 19(2)(c) and 24(1)(b)). However, there is an exception to this power. If the Commission is convinced that the Canadian Broadcasting Corporation has infringed or failed to observe a

condition to which its broadcasting licence is subject, after giving the Corporation the right to be heard, the Commission may not revoke the Corporation's licence. Rather, it must send to the Minister of Communications a report setting out the circumstances of such failure, and its conclusions, observations and recommendations. The Minister must then table a copy of this report in Parliament within fifteen days of receiving it or, if Parliament is not in session, within fifteen days after Parliament resumes sitting (s. 24(3)).

b) Do the restrictions in effect in the area of radio and television broadcasting not infringe on freedom of expression?

Freedom of expression as defined in Article 19 of the Covenant is not absolute. Its exercise is subject to restrictions justified by the duties and responsibilities which an individual owes to society.

In Canada, the applicable restrictions on broadcasting do not infringe the freedom of expression recognized by Article 19. They constitute legitimate limits of the type set out in the Covenant. This is the case, for example, with the Regulations adopted under the Broadcasting Act, R.S.C. 1970, c. B-11. These Regulations prohibit the broadcasting of any abusive comment on any race or religion, the use of obscene, indecent or profane language or the spreading of false or misleading news (Radio A.M.) Broadcasting Regulations, C.R.C. 1978, c. 379, s.s. 5(1)(b), (c) and (d); Radio (F.M.) Broadcasting Regulations. C.R.C. 1978, c. 380, s.s. 6(1)(b), (c) and (d); Television Broadcasting Regulations, C.R.C. 1978, c. 381, s.s. 6(1)(b), (c) and (d)). Freedom of expression is subject to universal values which are accepted by and which shape Canadian society. Thus, depicting racial or religious intolerance in radio and television broadcasts being an abuse of the freedom of expression is prohibited since it is contrary to the spirit of tolerance in Canada. The prohibition against the use of obscene language is based on the importance society attaches to morality. As well the prohibition against the propagation of false or misleading news is based on the economic, political and social importance attached in society to modern broadcasting and the need to be protected against individuals abusing it.

Even if not completely supported, the restrictions on non-Canadian content in programming (Radio-(A.M.) Broadcasting Regulations, s. 12; Television Broadcasting Regulations, s. 8) and on the ownership of Canadian broadcasting companies by foreign interests by (Direction to the C.R.T.C.(Eligible Canadian Corporations), C.R.C. 1978, c. 376) do not constitute an infringement on the freedom of expression. These restrictions are not intended to prevent Canadians from receiving foreign

broadcasts or to prevent the diffusion of such broadcasts in Canada. Rather, they are intended to guarantee Canadians full access to their broadcasting system in order to be able to explain themselves without being limited simply to being spectators and listeners. This facilitates the affirmation of Canadian unity. Letting foreign interests take control of a large part of the Canadian broadcasting system and its programming would work against this objective and would result in depriving Canadians of their most efficient means of communicating with their fellow Canadians.

The rules governing the Canadian broadcasting system leaves Canadian broadcasters a large freedom of expression and Canadian audiences an important freedom of choice, while assuring the protection of Canada's national interests. In conclusion, it must be remembered that the Canadian Radio Television Commission carefully strives, by the conditions it attaches to licences and by the objectives it formulates for broadcasters, to guarantee the variety, balance and high quality of Canadian broadcasting.

This is an important means to encourage freedom of expression.

7. Are there remedies available to citizens who believe that the government is disseminating propaganda in favour of war?

The Government of Canada does not disseminate propaganda in favour of war. As a result, citizens of Canada need not concern themselves with this type of question. However, if the government did disseminate propaganda in favour of war, citizens would rely on the provisions of the Protocol and submit a communication to the Committee.

ARTICLE 21

1. The report does not refer to political opinion and the relationship between political opinion and freedom of assembly. What is this relationship?

In Canada, freedom of assembly cannot be dissociated from freedom of speech, of the press and of association. These freedoms, which are often referred to as fundamental freedoms are complementary. The proper functioning of the Canadian political system is founded on the existence of these freedoms.

Implicitly recognized in the Anglo-Canadian judicial tradition, these freedoms (as well as the freedom of religion) are expressly guaranteed in the Canadian Charter of Rights and Freedoms (section 2). In the same way, these freedoms are recognized in Québec under section 3 of the Charter of Human Rights and Freedoms, R.S.Q. c. C-12.

2. Is the right of peaceful assembly regulated? Is it necessary to obtain prior authorization to hold public meetings, or is there an absolute right to do so?

In Canadian law, a distinction must be made between the right of peaceful assembly and the right to use public property. There is no doubt that in Canada there is a right of peaceful assembly (Canadian Charter of Rights and Freedoms, section 2; Charter of Human Rights and Freedoms, section 3). Any individual may take advantage of this right, as long as he or she does not use public property. Anglo-Canadian law recognizes that there is no right to hold public meetings on the public property of a city (Attorney General of Canada and Claire Dupont v The City of Montréal, (1978) 2 SCR 770, at 797 and 798). Individuals who want to use public property for a demonstration must therefore request authorization from the competent authorities, generally the municipal governments. If such authorities refuse to grant authorization, their decision may be contested. However, since they have discretion in the matter of use of public property, the courts will not set aside their decisions unless it is proved that there was an abuse of discretion, for example, if the decision discriminates against a particular group.

3. Sections 64 and 65 of the Criminal Code prohibit unlawful assemblies and riots. Are the expressions "unlawful assemblies" and "riot" defined by statute and, if they are not, who decides that such an assembly is unlawful and on what criteria?

There is an unlawful assembly when three or more persons, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when they are assembled as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that they will disturb the peace tumultuously, or will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously (Criminal Code, s. 64(1)). However, there is not an unlawful assembly when a group of persons are assembled to protect the dwelling-house of any one of them against persons who are threatening to break and enter it for the purpose of committing an indictable offence therein (s. 64(3)). A lawful assembly may become an unlawful assembly when the persons assembled conduct themselves with a common purpose in a manner that would have made the assembly unlawful if they had assembled in that manner for that purpose (s. 64(2)). A riot is an unlawful assembly that has begun to disturb the peace tumultuously (s. 65).

ARTICLE 22

Constitution and role of unions

1. Are there special bodies with the jurisdiction to decide labour disputes?

In Canada, every level of government has created bodies which are charged with the task of settling various problems relating to labour relations in the private and public sector. Without entering into a detailed description of the powers given to each such body by its enabling legislation, the powers and functions of one of these, the Canada Labour Relations Board, may be concisely described as an example:

"The Canada Labour Relations Board is a quasi judicial body with statutory and regulatory powers pertaining to the administration of Part V of the Canada Labour Code dealing with industrial relations.

The Board also acts under Part IV of the Code hearing appeals against safety rulings in cases where imminent danger has been alleged. It also rules on complaints by employees that they have been discriminated against or punished for exercising their rights in relation to safety.

A significant part of the Board's activities is concerned with applications by trade unions for certification as bargaining agent for groups of employees. Where the majority of employees in a bargaining unit which the Board finds to be an appropriate unit for collective bargaining wishes to be represented by that trade union, the Board will grant certification. This imposes an obligation on the employer to recognize the union and to bargain in good faith with a view to concluding a collective agreement. Occasionally it is necessary for the Board to conduct secret balloting in order to determine the wishes of the employees. There are, of course, limitations as to the time when such applications may be submitted. There are also time limits within which applications may be made by employees to remove the union as their bargaining agent as well as for another union to displace an existing union when the majority of employees in the unit so wish.

Other determinations as to bargaining rights involve the review of certifications where changes have taken place in the structure and operations of the employers, where unions have merged and when businesses have been sold or reorganized.

The Board also hears and determines complaints of unfair labour practices against employers and unions and has power to grant relief to successfull complainants including reinstatement and compensation where appropriate.

The Canada Labour Code prohibits strikes and lockouts during the life of a collective agreement and until the mediation and conciliation assistance provided by Labour Canada has been exhausted. Where an unlawful strike or lockout occurs or is anticipated, the injured party may apply to the Board which has the power to issue, cease and desist orders and to order employees to return to work.

Where employees are living in an isolated area or on property controlled by the employer or another person, the Board may, on application, issue an access order for a union organizer to gain access to such employees.

...

Where there is a failure to comply with any order of the Board, the Board may, on application, file its order in the Federal Court of Canada. When so filed, a Board order is enforceable as though it were an order of the court.

Certain violations of Part V of the Code are punishable by fines. In order to institute a prosecution in the courts for such violations of the law it is necessary to obtain the consent of the Board. It is the Court, however, and not the Board, which has the power to impose the penalties.

The Board also has certain responsibilities to ensure negotiation between parties on the impact of technological change where the parties have not negotiated such matters.

A further responsibility of the Board provides for referral from the Minister of Labour of certain labour disputes. If the Board deems it appropriate in such cases of referrals by the Minister, it may impose on the parties the terms and conditions of a first collective agreement."[11]

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11. Canada Labour Relations Board, Annual Report 1979-80, Ottawa, 1980, Department of Supply and Services, p. 9.

ARTICLE 23

1. Some provinces have raised the minimum age necessary to obtain a marriage licence. What is the present tendancy in Canada in this area?

Any change to the law relating to the age of consent in matters pertaining to marriage is within the jurisdiction of Parliament. However, the provinces and territories, with the exception of Québec, have raised the age of marriage by refusing to issue marriage licences to persons who have not reached the age provided in a provincial statute. These provisions are enacted in exercise of their jurisdiction over the celebration of marriages (Constitution Act of 1867, s. 92(12)), there being no relevant federal legislation. The table below indicates current provincial legislation on this question.

MARRIAGE LICENCE IN PROVINCIAL LAW, AGE AT WHICH MAY BE OBTAINED

Provinces	Normal Age	With parental consent or, if impossible, with dispensation of the court	Exceptional cases(interests of the parties, pregnancy)
Alberta	18	16	12(W)* 14(M)
British Columbia	19	16	12(W)* 14(M)
P.E.I.	18	16	12(W)* 14(M)
Manitoba	18	16	12(W)* 14(M)
New Brunswick	18	12(W)* 14(M)	12(W)* 14(M)
Nova Scotia	19	16	12(W)* 14(M)
Ontario	18	16	12(W)* 14(M)
Saskatchewan	18	16	12(W)* 14(M)
Newfoundland	19	16	12(W)* 14(M)
N.W.T.	19	15	12(W)* 14(M)
Yukon	19	15	

*In English common law, the minimum age for marriage is fourteen full years for a man and twelve full years for a woman.

In Québec, Article 115 of the Civil Code of Lower Canada recognized the right to marry as fourteen full years for a man and twelve full years for a women, with parental consent. By virtue of Article 119, when a child reaches the full age of eighteen years, he or she may contract marriage without parental consent being required. However, Article 401 of the Québec Civil Code provides that no person may contract marriage before reaching the age of eighteen years. Article 403 provides that the age limit may be waived by the court for good reason when the future spouse is younger than eighteen years. For reasons of constitutional law, these provisions of the Québec Civil Code, enacted by the Québec National Assembly, have not yet been proclaimed.

In Ontario, the statutory minimum age for marriage is now 16 years.

2. Article 115 of the Civil Code of Lower Canada provides that a man and a woman may contract marriage if they have reached the full ages of fourteen and twelve years, respectively. Is this provision compatible with s. 146 of the Criminal Code, which forbids a male person to have sexual relations with a female person under the age of fourteen years?

There is no conflict between these two provisions, since s. 146 of the Criminal Code does not forbid sexual relations between married persons.

ARTICLE 24

1. What is the legal situation of natural/adulterine children? Do they carry the name of their father or their mother?

These questions were answered by the Canadian Delegation when it presented the report to the Human Rights Committee in Geneva in Document CCPR/C/SR. 211, p. 16, para 61.

Refer to the provinces.

2. What are the administrative and judicial procedures for legitimization of natural and adulterine children?

Refer to the provinces.

ARTICLE 25

1. Questions relating to Canada's political system

a) What opportunities, other than elections, are there for Canadians to take part in public affairs?

Traditionally, citizens have participated in the political process by belonging to a political party, by participating in electoral campaigns as election workers or as candidates, and finally by voting. However, these are not the only means available. Governments today are extremely sensitive to public opinion. Their electoral survival in the short or long term depends on the public's opinion of their programmes and policies. For this reason, individuals tend more and more to make their points of view known to their members of Parliament and the legislature, in hope of influencing them and through them to influence the policies of their governments. For this reason also, people who share the same points of view, or who have common interests, will form organizations which are intended to promote these theories with those who hold power, for example, ministers, members and senior public servants. This is the phenomenon of pressure groups. A host of groups, including employers, associations representing various sectors of the economy, unions, professional groups, charities, religious, sport, ecological and patriotic organizations, and so on, attempt to influence governments, either directly or indirectly, by attempting to convince the public of the merit of their ideas and of the concepts they are putting forward.

b) Is the ability of all citizens to be appointed to the office of Senator equal? May anyone nominate candidates? To what extent is this matter left to the discretion of the Governor General? For example, can he or she remove a member of the Senate from office?

Theoretically, any person who meets the eligibility conditions specified in s. 23 of the Constitution Act of 1867. Accordingly, anyone who:

a) is of the full age of thirty years;
b) is either a natural-born or naturalized subject of the Queen;
c) is seized of real property of a value of $4,000.00, over and above all debts and liabilities relating to such property;
d) has real and personal property worth $4,000.00 over and above his debts and liabilities;

e) resides in the province for which he or she is appointed; and
f) in the case of Québec, has his real property qualifications in the electoral division for which he is appointed, or resides in that division,

may be appointed to the Senate by the Governor General (s.24). In practice, the Governor General simply appoints the people designated by the Prime Minister. With a few exceptions, Senators are proponents of, or close to, the party in power.

Once a Senator has been appointed, s. 29(2) of the Constitution Act of 1867 provides that he or she will occupy the place until reaching the age of 75 years. However, there is one exception to this principle. By virtue of s. 29(1), Senators appointed before June 2, 1965, will occupy their place in the Senate for life.

If a Senator wishes to resign, he or she may do so (s. 30). The place occupied by a Senator will also become vacant in the following situations:

1. if, during two consecutive sessions of the Parliament, he fails to give his attendance in the Senate;

2. if he becomes a citizen of a foreign power, becomes entitled to the rights and privileges of a citizen or takes an oath or declares allegiance to such a power;

3. if he is adjudged bankrupt or applies for the benefit of any law relating to insolvent debtors;

4. if he is guilty of misappropriation of public funds;

5. if he is tainted by treason or convicted of a felony or of any infamous crime;

6. if he ceases to be qualified in respect of property or residence (s. 31).

If there is any question concerning the qualifications of a Senator or a vacancy in the Senate, such question shall be heard and decided by the Senate (s. 33).

Finally, it should be noted that political legitimacy lies in the House of Commons. As a non-elected body, the Senate may not in practice thwart the will of the people as expressed by their representatives. To do so would create a constitutional conflict, which could only be resolved to the detriment of the Senate, notwithstanding its quasi-equal position.

2. Questions relating to employment in the Public Service:

a) Have any people ever failed to be appointed to positions in the Public Service because of their political opinions, this being a ground of discrimination that is not expressly forbidden by the Public Service Employment Act? Specifically, may "extremists" become public servants?

By virtue of s. 10 of the Public Service Employment Act, R.S.C. 1970, c. P-32, public servants are chosen on the basis of merit. The concept of merit excludes discrimination on the basis of political opinion, inter alia. However, considerations of national security make it possible to prohibit entry into the Public Service, or to exclude from it, people whose loyalty or reliability are placed in doubt. For this reason, people who belong to or are affiliated with extremist groups of the right or left maybe excluded from the Public Service. Provisions of the Charter recognizing freedom of expression (section 2) and the right to equality before and under the law (section 15 which comes into force on April 17, 1985) should not change this situation.

b) There appears to be some divergence between the English and French versions of s. 12 of the Public Service Employment Act. The French text could imply that the Commission may lawfully establish a "fair" distinction. Is this the case?

There is no difference between the French and English versions of s. 12(2) of the Public Service Employment Act. Both the French text and its English equivalent provide that the Public Service Commission shall not discriminate against any person by reason of sex, race, national origin, colour, religion, age or marital status in prescribing or applying selection standards governing selection of candidates for employment in the Public Service.

c) Is the fact that a public servant may not be a candidate in a federal, territorial or provincial election without the authorization of the Public Service Commission compatible with the spirit and letter of Article 25 of the Covenant?

It would only be contrary to Article 25 of the Covenant to forbid public servants to engage in certain political activities, as does s. 32 of the Public Service Employment Act, if such restrictions were unreasonable. The restrictions imposed by s. 32 reflect a happy compromise between political sterilization and complete politicization of public servants. Commenting on this dilemma, and the solution reflected in s. 32, in his book on the Canadian and Québec public service, Prof. Patrice Garant stated:

"(Trans) It is difficult to reconcile the requirements and duties of the position with those of the public servant's political freedoms, because what is at issue in the debate, as is stated by René Bourdoncle, is "not only the right of the State to the loyalty of its servant, but also the right of the citizenry to impartiality". Thus the question could be put in this way: may the State count on the loyalty of its public servants without demanding that they be vassalized or neutralized?...

How must a truly democratic system resolve this contradiction? How can we settle this conflict, (which) exists between the democratic principles that encourage us to grant full capacity to all citizens and the defence of the system that requires that we "neutralize those citizens on whom the everyday implementation of the laws depend"?

The Canadian and Québec solution lies in a compromise; it seeks to reconcile the neutrality of the public service with freedom of opinion for public employees. On the one hand, it limits the full exercise of the political freedoms traditionally granted to citizens, and on the other hand, it defines the scope of the requirement of non-involvement imposed on public servants. This solution...attempts to created a balance between two opposing principles. On this topic, we can only adopt the two statements of the Report of the British Committee appointed in 1949 to study the problem of political activity on the parts of civil servants: in democratic activity, it is desirable that all citizens be involved in the management of the affairs of the State, and that the largest possible number play an active role in public life; the interests of everyone require that the political neutrality of the public service, and competence within the framework of such neutrality, be preserved.

The public servant should therefore agree, in the name of the neutrality of the public service, to agree to limit his or her own freedom: in the name of democracy, the State should agree to limit the requirement of non-involvement imposed in its servants."[12]

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12. Patrice Garant, La Fonction publique canadienne et québécoise, Québec City, 1973, Les Presses de l'Université de Laval, pp 348-349.

ARTICLE 26

1. Does Canadian law offer protection against laws which authorize discrimination?

As of April 17, 1985, all federal, provincial and territorial laws will be subject to subsection 15(1) of the Canadian Charter of Rights and Freedoms, unless they have been declared to apply notwithstanding the Charter, in accordance with section 33. This provision sets out, "Every individual is equal before and under the law and had the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability". This provision, however, does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups (subsection 15(2)). The equality rights recognized by the Charter do contain certain limits. In the first place, a government may incorporate a notwithstanding clause into its laws which has effect for no more than five years, but which is renewable indefinitely. As well, the Charter recognizes that a right may be restricted by reasonable limits prescribed by law, if they can be justified in a free and democratic society (sections 1 and 33).

Before section 15 comes into force, an individual may rely, federally, on the protection of the Bill of Rights. Pursuant to the Bill of Rights, all federal or territorial laws which abrogate, abridge or infringe upon the right of the individual to equality before the law and the protection of the law or which authorize the abrogation, abridgment of infringement of this right are inoperative (subsection 1(b) and 2). In addition, as explained previously, similar provisions exist in human rights laws of various provinces (Alberta, Ontario, Prince Edward Island, Québec and Saskatchewan). For example, the Alberta Bill of Rights, R.S.A. 1980, c. A-16, establishes similar protection with respect to provincial laws (subsection 1(b) and 2). As with the Charter, the protection provided by these Acts is not absolute. The legislators may incorporate a notwithstanding clause into an act (Bill of Rights, section 2). As well, even if these Acts do not expressly limit equality rights, the courts have developed the valid purpose test. Where an act is attacked as contravening the equality rights, the courts determine whether there exists a valid purpose justifying the act's breach of the right.

2. Are there any discriminatory Canadian laws?

In Canada, federal, provincial and territorial governments have taken, and continue to take the necessary measures to remove any

distinctions in their laws, which cannot be justified. Several governments have adopted acts to remove distinction based on sex. These include: The Statute Law (Status of Women) Amendment Act, 1974, S.C. 1974-75-76, c. 66, The Status of Men and Women Amendment Act, S.B.C. 1975, c. 73, and An Act to Amend the Statute Law Respecting Women, S.N.S. 1978, c. 42. As of April 17, 1985, the recognition of the equality rights in section 15 of the Canadian Charter of Rights and Freedoms will as a consequence ensure that laws will not make prohibited distinction between individuals, unless the application of the article has been suspended by a legislative provision.

The Canadian Charter of Rights and Freedoms authorizes affirmative action programs (subsection 15(2)). Such programs even if authorized by law, are not unjustified within the meaning of section 26 of the Covenant, since their object is to improve the conditions of disadvantaged individuals or groups. To this end, the government of Canada refers the Committee to article 2(2) on the International Convention on the Elimination of All Forms of Racial Discrimination and article 4 of the Convention on the Elimination of All Forms of Discrimination Against Women which authorizes such programs.

ARTICLE 27

1. What is the actual situation of the various ethnic groups and minorities living in Canada? Are there programmes intended to encourage the development of the various ethnic groups and minorities within Canadian society? Is Canada seeking to strengthen ethnic identity or to assimilate minorities into the rest of the population?

Canadian culture is characterized by its diversity, and its refusal to adopt a single national identity. It draws its originality from the many cultures that meet today in Canada, and whose origins go back to the very first inhabitants of North American, and from there to all the people of the earth.

With only one exception[13], there is no federal legislation under which individuals belonging to an ethnic, religious or linguistic minority could lose the right to have their own cultural life, in common with the other members of their group, to profess and practice their own religion and to use their own language. While the Canadian Charter of Rights and Freedoms, states that the English and French languages are the official languages of Canada for all purposes of the Parliament and Government of Canada (s. 2), it changes no rights and privileges acquired or possessed by virtue of law or custom by any languages other than the official languages.

Moreover, all federal (or territorial) legislation limiting rights granted to minority groups by Article 27 of the Covenant would be inoperative if the Courts found that they abrogated, abridged or infringed freedom of religion, speech, assembly or association, or the press, freedoms that are recognized in section 2 of the Canadian Charter of Rights and Freedoms. It should be noted that the Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada (section 27). In Québec, the rights protected by section 2 of the entrenched Charter are protected by section 3 of the Charter of Human Rights and Freedoms. Those acts subsequent to June 27, 1975 may be declared to be inoperative if they deny the rights recognized by section 3 to persons identifiable by their race, colour, sex, sexual orientation, civil status, religion, political convictions, language, ethnic or national origin, social condition, handicap or the fact that they use any means to palliate their handicap (sections 10 and 52). Upon entry into force of Bill 86 (An Act to Amend the Charter of Human Rights and Freedoms), this

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13. In Lovelace v Canada, the Human Rights Committee expressed the opinion that s. 12(1) of the Indian Act, R.S.C. 1970, c. I-6, could in some cases be contrary to Article 27 of the Covenant. The federal government has undertaken to amend this section, and the provisions related to it.

prohibition will apply to all Québec laws.

It would be difficult to list all the programmes intended to promote the advancement and development of the various cultures in Canada. For example, mention could be made of the fact that the Secretary of State is responsible for developing and implementing government policy concerning cultures other than the English and French. For this purpose, the government provides financial assistance, to encourage teaching, publications of newspapers, periodicals and so on, and broadcasting in minority languages. It has also established a program for professional, technicial and financial assistance to cultural and linguistic minorities. For a more specific description of the programmes administered by the Department reference may be made to the Annual Report of that Department, relevant portions of which are reproduced in Appendix IV.

2. Questions relating to the status of Indians and Eskimos in Canada

   a) How does the system of internal autonomy granted to Indian tribes function in practice?

This question was considered in "Indian Conditions: A Survey", a study prepared for the Department of Indian Affairs and released in 1980.

> "Before 1950, government relationships with Indians were custodial and protective, operating within legislation that contained a repressive attitude toward Indian cultures. The 1951 Indian Act introduced measures tht allowed band councils to exercise many local government functions. Nonetheless, in the 1950's and early 1960's:
>
> - Most Indian communities were administered rather than self-governing. Bands had neither staff nor institutional structure for administration.
>
> - Administration was carried out by "Indian Agents" who were employees of the government and not the band. While band councils existed, they operated more or less under the direction of government officials rather than under the direction of their elected or traditionally appointed chiefs.
>
> - Bands were isolated from one another and from non-Indian political structures. They lacked resources and training for political action.

- Virtually no effective associations of Indians existed either regionally or nationally (except ad hoc associations created in crisis situations). Indians had almost no means independent of government to represent their views or air grievances in local or national political contexts.

- Indians did not have full federal voting rights until 1960, and the last province to extend full voting did so in 1969.

During the last 10 to 20 years:

- "Indian Agents" were removed from reserves. The last agency was closed in 1969.

- Bands have assumed increased responsibility for administration as evidenced by the number of band by-laws, involvement in health, school administration and policing.

- "Core funding" grants were provided to Indian bands starting in 1972 to cover the costs of band councils and their administration.

- "Contributions to Bands" program was started on a pilot basis in 1968 and formalized in 1974 so that Indian bands could administer local programming.

- Funds to support band administration in various forms have increased from $5.2 million in 1970-71 to $22.6 million in 1978-79.

- Staff employed directly by bands has increased from fewer than 100 in 1961 to approximately 1,900 in 1978-79.

- Funds administered by bands have increased from $34.9 million in 1971-72 to $227.2 million in 1978-79, representing one-third of the Indian Affairs Program budget.

- "Core funding" grants for Indian political associations were provided by the Secretary of State starting in 1970.

- Indian political assocations are operating in all provinces and at the national level, with total funding for all purposes of around $20 million.

- Indian political awareness and involvement has increased, as reflected by the numbers of Indians making representations to governments and involved in political parties.

- Indian participation in federal and provincial elections has declined.

People interviewed for this report felt that there had been major and positive changes in Indian political conditions. Indians, for instance, felt that:

"...Indian people have become much more politically sophisticated in the last ten years than they were before, to the extent that now more than just leaders understand what they would like to achieve and they have become, as a body of people, more able and more likely to let their views be known. This combines with the fact that government officials these days seem to understand that they are there to assist Indian people, not to assimilate them or patronize them. (Comments by Indian interviewer summarizing interviews)."

At the same time, Indian leaders maintain a wholesome scepticism towards the intent of government policy to reinforce Indian status and avoid Indian assimilation - an attitude that is probably essential to ensure that Indian identity is maintained.

Most interviewees commented postively on the rapid development of band government. Some suggested that while Indian band government is young compared to non-Indian local government, its effectiveness and efficiency compares favourably to non-Indian local government at a similar stage of development.

Others, particularly Indians, felt that the way band government has evolved and the nature of the financing arrangements established by governments, have tended to turn chiefs and band councils into administrators, making them less effective as political leaders.

Some felt that funding arrangements created political factions in Indian communities and that Indian local government had reached its logical limits until a less capricious system of funding Indian bands could be established.

Comments on the Indian associations and their impact were generally positive, but some interviewees were concerned that the roles of associations relative to Indian bands had not been effectively established, and that existing funding arrangements for Indian associations tended to separate political associations from bands."[14]

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14. Department of Indian and Northern Affairs, Indian Conditions: A Survey, Ottawa, 1980, by the Department, pp 82-83.

b) What steps have been taken to protect the interests of Indians and Eskimos in order that they may integrate into modern society and share in the benefits of that society?

It has already been mentioned that during recent years there has been a significant improvement in the political status of Indians, and the same is true of their economic status. This situation is described in the study Indian Conditions: A survey, as follows:

"During the last 10 to 20 years:

- Education levels and skills have improved. Participation in elementary schools is close to the national level. Attendance at university has increased 10 times in the last 10 years, although participation is half the national rate.

- Total attendance in secondary schools has increased since 1969 by 50 per cent, although participation rates are declining from their peak in 1972-73. Retention through to the end of secondary school is about 20 per cent compared to a national rate of 75 per cent.

- The Indian working-age population (15-64), which was relatively stable between 1966 and 1976, will expand rapidly in the early 1980's to about two-thirds of the Indian population by the mid-1980's.

- This increase in the working-age population is taking place in an on-reserve employment market unable to satisfy current requirements and an off-reserve employment market already saturated by the previous national "baby boom" population.

- More Indians, though the same proportion, are working than 10 years ago, more consistently throughout the year, and more in "white collar" jobs, but average Indian incomes are probably one-half to two-thirds of national levels.

- Indian employment remains at about 35 per cent of the working-age population, including those following traditional life styles.

- The increased capacity among Indian people to work in the general economy is partly the result of an increase in economic development investment during the past 10 years ($250 million compared to $50 million in the previous 10 years).

- Despite improvements, Indian participation in the national

economy remains characterized by inexperience and caution on both sides.

- Resources on reserves are extensive and, taken together, might support the current Indian population, but:

  . resources are not evenly distributed, and there is little economic interaction among Indian communities;

  . much of the resource base requires long-term development and is capital-intensive;

  . reserves are not able to meet existing requirements for about 50,000 jobs.

- Indians are restricted under the Indian Act now, as they were 20 years ago, in the degree and manner in which they may develop and exploit reserve resources. Reserve lands are held by the Crown for Indian use, and therefore cannot be managed and exploited simply as a community asset.

- An aggregate investment of over $250 million has been made in Indian economic development in the last 9 years, resulting in more than 10,000 permanent jobs and at least 2,000 continuing projects."[15]

To improve the economic conditions of Indians, the Government must encourage their access to the labour market. One of the ways used by the Government to reach this objective is to encourage the economic development of the reserves and the surrounding area. For this reason, the Government provides personal and communal loans and loan guarantees to assist Indians to start business entreprises as well as providing technical and planning services to support economic expansion and job creation. Unfortunately, development of the reserves does not seem to be sufficient to permit all Indians to live and find work there. This is why the Government helps them to acquire the necessary technical and professional skills to obtain employment off the reserves. Finally, it should be mentioned that Indians are one target group of affirmative action programs in employment. In these programs, the Government encourages private sector employers to hire natives, as well as promoting their employment in the public sector.

While the federal government is committed to improving the economic status of Indians, it wishes to do so without causing the Indians to lose their cultural heritage. Although the government's policy until the beginning of the 1950's was assimilationist, such a policy has now been abandoned. The

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15. Ibid, p. 47.

following changes in the area of Indian culture that have occurred since 1950 should be noted:

- elimination of legislation and administrative practices which previously suppressed Indian language and cultural expression
- increased Indian use of traditional cultural practices
- various Indian programs designed to reinforce traditional culture and to ensure awareness of cultural heritage
- increased awareness and appreciation among non-Indians of Indian heritage and contemporary expression.[16]

It should be noted that among the federal government's cultural policies, there are programmes designed to promote the teaching of Indian languages to children:

> Since 1972, federal and band schools have provided native languages as a language of instruction in kindergarten to grade 3 (over 1,000 participants in 1977) and as a second language (over 12,500 enrolled in 1977).[17]

The programmes instituted in 1972 to promote creation of cultural and educational centres operated by Indians should also be noted:

> Indian cultural/educational centres have been funded by the Indian Program since 1972. There are 57 centres operated by Indians, with current annual funding of $5 million compared to $1.7 million in 1972.
>
> These centres, which employ about 425 Indians:
>
> - research and record various aspects of Indian culture
> - develop educational resource material and personnel
> - provide exhibitions, publications and meetings for contemporary Indian cultural expression
> - provide counselling, particularly in the education system, and support for Indians away from their communities.[18]

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16. Ibid, p. 40.

17. Ibid, p. 40.

18. Ibid, p. 41.

Finally, as a result of support provided by the Secretary of State Native Communications Programme, communications (newspapers, magazines, radio and television programming) of various kinds have improved recently.

- there are now more than 35 Indian and native-oriented newspapers and magazines

- there are now regular native-language radio broadcasts in the north and in a number of western provinces. There is also one regional half-hour program per week of native-language television broadcasting.[19]

In the regions of the North where the Inuit population is concentrated and where several Indian groups live, the Government is seeking:

(a) to bring, either directly or though the intermediary of the territorial governments, improvements in the social conditions of the residents of the North, by putting particular emphasis on the needs of the aboriginal peoples in this region;

(b) to help territorial governments in supplying education and social development programs and health services, in assuring local administration and in distributing other public services to all the inhabitants of the North;

(c) to assist the population of the North to preserve and encourage its culture.

The Government policy on the Inuit is intended to protect their culture, without, however, depriving them of the benefits of Canadian society. The Government therefore consults them on the development of the regions where they live, since such development has an impact on their culture.

In order to encourage the social and cultural development in the North, the Department of Indian and Northern Affairs:

(a) sponsors a program of contributions to artists, musicians and authors;

(b) promotes the distribution of Inuit art and literature both nationally and internationally;

(c) subsidizes native language and culture programs and provides financial support for telecommunications projects. To this end, the Department:

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19. Ibid, p. 42.

i) sponsored workshops on Inuktitut terminology, organized by Inuktitut translators, and continues to revise an Inuktitut dictionnary;

ii) published a special edition of Inuktitut, the Department's Inuit language magazine, to celebrate the 20th anniversary of this publication;

iii) permitted the Inuit Art Section of the Departmental Research and Documentation Centre to increase its photographic and printed documentation;

iv) continues to encourage the production of Inuit films and provided assistance to the Inuit Tapirisat of Canada for projects of telecommunication by the Anik B Satellite; and

v) gave financial assistance for the programming and broadcasting of television emissions by the Inuit and for their training in the production of emissions on magnetic tape and on film;

(d) administered and financed professional and technical training programs. The Department established a service to counsel Inuit students in Southern Canada. As well, in Ottawa, Inuit House continues to play a role as cultural and social centre for Inuit students;

(e) provided financial and technical assistance to Inuits in order to facilitate their economic development.

Finally, it should be noted that the Department assists financially the Inuit in the lodging, preparation and negotiation of land claims.

The Government's policy on the Indian and aboriginal peoples may be summed up in a few words: to end a state of dependency, resulting from a much too paternalistic policy, by encouraging a feeling of community belonging and autonomy from the government. An example of the application of this policy may be found in the medical and hospital field. The Department of National Health and Welfare intends to have the native community take a much larger part in the local administration of health programs.

c) Under the terms of section 120 of the Indian Act, a child who does not attend school or who is suspended temporarily or permanently is considered to be a juvenile delinquent. Is this provision not a form of discrimination, since it applies only to Indian children? The penalty under subsection 119(3) for parents of children who are absent from school appears to be somewhat inhuman.

In Canadian constitutional law, as a general rule, the provinces have jurisdiction in matters of education (Constitution Act of 1867, c. 3, s. 93). The provinces enact legislation respecting the presence of children who do not attend school, or respecting their parents. As an exception to this general rule, Parliament may legislate in respect of the education of Indians (Constitution Act of 1867, s. 91(24). The fact that Parliament has exercised this jurisdiction and has enacted legislation that is different from that of the provinces does not imply, ipso facto, that such legislation is discriminatory. The fact that federal legislation is severe does not mean that the provincial legislation is less severe. In fact, there are provisions in provincial legislation that are equivalent in secerity to those in s. 120 of the Indian Act, R.S.C. 1970, c. I-6. Reference may be made on this point to the Education Act, S.O. 1974, c. 109, s. 29(1), or the Education Act, R.S.N.S. c. E-2, s. 99(1), or the Schools Act, R.S.N.B. 1973, c. S-3, s. 66. Section 76 of the Young Offenders Act when proclaimed, will abolish section 120 of the Indian Act (Young Offenders Act, S.C. 1980-81-82 c. 110). Once section 120 is repealed, the cases of truency by Indian children will be governed by provincial laws (Indian Act, section 88).

The penalty that may be imposed on any person who refuses or omits to send a child to school for whom that person is responsible is a fine not exceeding $5.00 or a term of imprisonment not exceeding ten days, or both, (Indian Act, subsection 119(3)) and this could not be considered inhumane. This provision may be seen as necessary to give effect to s. 13, para 2(b) of the International Covenant on Economic, Social and Cultural Rights (obligatory primary education). It should be noted that there are similar provisions in provincial laws. For example, the Manitoba School Attendance Act, C.S.M. c. S-20, s. 22(2) provides that a person who is responsible for a child who refuses or omits to ensure the child's attendance is liable on first conviction to a fine of not less than $5.00 and not more than $20.00, and in default of payment, to imprisonment for a term not exceeding 20 days. However, a judge may order a bond in the amount of $100.00 guaranteed by one or more persons, in place of the fine. For any subsequent offence, this Act provides for a fine of not less than $20.00 and no more than $50.00, or a term of imprisonment not exceeding 30 days. However, it should be noted that the equivalent provisions in provincial laws are normally less severe. For this reason, s. 119(3) and (4) should be reviewed if a review of the Indian Act is made in cooperation with Indians.

d) Is there a exchange of information and data that have been gathered between Canada and other countries in which there are Eskimos living, such as the United States, Denmark and the Soviet Union?

There are cultural exchanges largely between Canada and Greenland and Alaska, involving both the government and the various native organizations.

The exchanged scientific information deals mainly with the environment of the Inuit population and its state of health. As an example, the Arctic Research Institute in Fairbank, Alaska and the Canadian Department of National Health and Welfare have cooperated since the beginning of the 1960's with respect to the health of the Inuit and medical problems which they encounter. As well, Arctic Circle countries exchange such information amongst themselves. This cooperation takes various forms, i.e., exchange of documents, visits, conferences.

It should be noted that Inuits living in Alaska, Greenland, and Canada have established an organization, the Inuit Circumpolar Conference, in order to defend their rights and interests. The Inuits of Canada are represented at the Conference by the Inuit Tapirisat of Canada.

PART II:

SUMMARY OF RESPONSES OF THE PROVINCES AND TERRITORIES OF CANADA TO QUESTIONS RAISED BY THE HUMAN RIGHTS COMMITTEE

PREFACE

This report, as can be seen from the Table of Contents, has been organized as a technical document which will facilitate examination of questions posed by the Human Rights Committee vis à vis specific clauses of the International Covenant on Civil and Political Rights and answers given by the provinces and territories to the questions determined to be relevant to them. Reference to legislation is by short title. To accommodate research needs, a Table of Legislation with citations follows the Table of Contents.

For easy reference, the pertinent article of the Covenant will be stated, followed by a summary of the question or questions raised by the Human Rights Committee.

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INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

PREAMBLE

The STATES PARTIES TO THE PRESENT COVENANT,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Introductory Remarks

Before giving detailed response to the questions raised, the Committee should note developments in respect of the Canadian Charter of Rights and Freedoms (The Constitution Act, 1981). With the exception of the equality rights which will be of no legal effect until 1985, this Act came into force on April 17, 1982. The effect of this Act is to entrench the rights enumerated into the Constitution of Canada. It guarantees certain fundamental freedoms, democratic rights, mobility rights, legal rights, equality rights and linguistic rights.*

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* A thorough discussion of this Act can be found at the beginning of Chapter 1 of the Federal Responses

The federal constitutional system is complex. The Province of Alberta provided the following comment:

> "In the division of legislative powers ..., matters relating to employment and labour, including occupational health and safety, fall under the jurisdiction of the provincial government.
>
> In occupational health and safety matters within the province of Alberta, employees of the federal public service and its agencies are covered by applicable federal statutes and regulations. The Canada Labour Code is also applied to certain industries that have been declared by the Parliament of Canada to be for the general advantage of Canada. Administration of the Canada Labour Code and other relevant legislation is undertaken by federal government officials.
>
> Since there are two governmental authorities within the province, the question of jurisdiction does occasionally arise but is satisfactorily handled by officials in the respective departments.
>
> Coordination of requirements and services within the federal system is obtained through such bodies as the Canadian Association of Administrators of Labour Legislation, consisting of the Deputy Ministers of Labour from the provinces and the federal government, the Council of Health, comprising the Ministers of Health, and through numerous committees and other contact assemblies at the level of officials.

GENERAL PROVISIONS OF THE COVENANT

1. Canadian constitutional law

Question

What are the implications of Québec's ratification of the Covenant as regards Canadian constitutional law and Québec law?

Partial Reply

A partial reply to this question can be found in the third paragraph of the Summary Record of the Human Rights Committee, Ninth Session, at the 211th meeting, Palais des Nations, Geneva,

March 28, 1980(1).

Responses Summarized

As stated in the second paragraph on page 6 of Canada's Report to the Secretary-General of the United Nations, the Covenant has not been incorporated into Québec legislation. However, its ratification implies an undertaking to recognize the rights laid down therein. For that reason, an examination of Québec legislation was conducted so as to ensure that international standards are respected in the entirety in the domestic jurisdiction.

As a result of this examination, the Human Rights Commission of Québec has made representations to the Department of Intergovernmental Affairs and the Department of Justice in Québec. The Department of Justice established a task force that has already submitted its recommendations on this matter. At the present time, the recommendations are under consideration by the provincial Department of Justice.

2. The Covenant and domestic law

Question

What are the various levels of government doing to ensure that the rights recognized by the Covenant are observed?

Question

Have they considered the possibility of making a single agency responsible for overseeing, both in areas under the authority of Parliament and in those under the provincial legislatures, the application of the Covenant or the rights listed in it?

Partial Reply

SR 211, paras 3, 8, 26, 27, 28 and 29.

1. Throughout the rest of this report, reference to the Summary Record will be: SR, followed by the number of the meeting, followed by the number of the relevant paragraph. For example, SR 211, para 3.

None of the respondents indicated support for the idea of a single agency. The government of the Northwest Territories stated that such an agency would be undesirable while the Government of Saskatchewan indicated that a single agency would not be expedient or effective and the Governments of Manitoba and Newfoundland clearly rejected the idea.

Alberta does not support the notion of a single agency with responsibility for these matters. Actions are taken by various levels of government to ensure that rights recognized by the Covenants are observed; an Interdepartmental Standing Committee on Human Rights has been formed in which the Department of Labour is taking a leading role. The Committee has no specific cabinet sanction, all final policy decisions are made at the cabinet level. The scope and authority of the Individual's Rights Protection Act ensures that the rights of individuals are respected.

Respondents from British Colombia, Manitoba, Québec, Nova Scotia, Newfoundland and Prince Edward Island all made reference to the provincial human rights legislation in force in their respective provinces promoting the principles of the Covenant. Québec noted that its Human Rights Commission works in cooperation with other agencies such as the Council of the Status of Women and the Office for Handicapped Persons. Newfoundland indicated that its legislative draft persons and provincial lawyers have been instructed to ensure that all legislation conceived and drafted is in general accord with human rights principles. The preamble to the Human Rights Act of Prince Edward Island makes specific reference to the Universal Declaration of Human Rights as proclaimed by the United Nations. The Government of Yukon reports that their Department of Justice, and Women's Bureau plan to conduct a review of legislation and may enact an Omnibus Bill to make necessary changes.

ARTICLE 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

   a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

   b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

   c) To ensure that the competent authorities shall enforce such remedies when granted.

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1. Canadian Bill of Rights

Question

Are there provincial laws similar to the Bills of Rights? What is their scope?

Responses Summarized

The Northwest Territoires indicated that no similar laws have been passed whereas in all of the respondent provinces such

legislation does exist. Human rights in Yukon are protected in the Fair Practices Ordinance.

British Columbia made mention of the Human Rights Code which prohibits discrimination in public facilities, purchase of property, tenancy premises, employment advertisements, employment and membership in trade unions, employers and occupational associations on the basis of race, religion, colour, sex, ancestry and place of origin. Discrimination in advertisements for employment, employment and membership in occupational associations is also prohibited on the ground of political belief and the ground of age for persons between 45 and 65. British Columbia has a notable additional prohibition against discrimination "without reasonable cause" in the areas of services customarily available to the public, employment and membership in occupational associations. Furthermore, the provincial crown in British Columbia may be sued for the wrongful acts of its servants except where the servant was acting reasonably and in good faith while purporting to discharge responsibilities of a judicial nature or connected with the execution of judicial process.

The Saskatchewan Human Rights Code applies equally to all Saskatchewan citizens and restates some of the provisions of the Canadian Bill of Rights such as freedom of religion, freedom of speech, freedom of assembly and association and freedom of the press. In relation to provincial offences, every person is entitled to enjoy the right to freedom from arbitrary arrest and detention and the right to an immediate judicial determination as to the legality of the detention and to notice of the charges upon which he or she is detained.

In 1975, Québec passed the Charter of Human Rights and Freedoms which contains within it anti-discrimination provisions (sections 10 to 20) supplemented by provisions on political rights, legal rights as well as economic and social rights. This Charter binds the Crown, supersedes laws adopted thereafter, and upon the entry into force of Bill 86 (An Act to Amend the Charter of Human Rights and Freedoms) will supercede all Québec laws.

In addition to its Human Rights Act, Nova Scotia codified the right of a citizen to bring a habeas corpus action in the Liberty of the Subject Act.

The Alberta Bill of Rights, S.A. 1972, c. 1, is similar to the Canadian Bill of Rights. The scope of the Alberta Act recognizes and declares that in Alberta there exists without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely:

a) the right of the individual to liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

b) the right of the individual to equality before the law and protection of the law;

c) freedom of religion;

d) freedom of speech;

e) freedom of assembly and association;

f) freedom of the press.

The Alberta Bill of Rights and the Individual's Rights Protection Act render all other provincial legislation inoperative to the extent that it contravenes any of the provisions of these two statutes.

In Ontario, the Human Rights Code, which was proclaimed in 1981 and replaces the 1962 Code, forbids discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status, and handicap in the areas of employment, housing, services and facilities and related advertising. In addition, a person with a record of offences has a right to equal treatment with respect to employment and a person in receipt of public assistance has a right to equal treatment with respect to the occupancy of accommodation. The subsection which gives primacy to the 1982 Human Rights Code comes into effect in 1984. The Ontario government is continuing to review existing legislation in order to identify and remove breaches of the Code.

In most provinces an Ombudsman Act applies to government departments, crown corporations, municipalities and regional districts, schools, colleges and universities, hospitals and professional statutory societies and provides additional remedies to individuals who feel they have been unfairly treated.

2. Canadian Human Rights Act

Question

What is the value of this Act and its provincial counterparts?

Question

In particular, can one hope to settle complaints of discrimination by means of a "voluntary solution" as provided for in the Canadian Human Rights Act?

Responses Summarized

Numerous respondents noted that federal and provincial human rights legislation has provided a standard of conduct which, when encouraged and enforced, has resulted in overall progression in the human rights effort. Provisions dealing with "voluntary solution" can be found in most of the provincial human rights legislation as well as the federal Act and no respondent indicated that it was an unworkable concept. Rather, emphasis was placed on the follow-through procedures should voluntary settlement not take place. British Columbia, Saskatchewan, Manitoba, Ontario and Prince Edward Island all made reference to the optional next step following failure to settle as being the establishment of a Board of Inquiry to hear argument from both sides and to decide whether or not the complaint is to be supported. British Columbia and Manitoba specified Code provisions regarding prosecution for offences of discrimination and monetary penalties. Manitoba noted that a decision of a Board of Adjudication is enforceable as a judgement of the Queen's Bench. In Ontario, 75% of the cases are settled by the conciliation process and the other cases are either dismissed by the Commission or forwarded to a Board of Inquiry. Québec refers members of the Committee to page 521ff of the French version of Canada's Report which is an explanatory note on La Commission des droits de la personne du Québec (The Human Rights Commission of Québec).

3. Recourse against public servants

Question

What remedy can someone use against the governments of the Northwest Territories and the Yukon for wrongdoing by an employee of either of those governments in the course of his employment?

Question

Can the employee be prosecuted personally?

Responses Summarized

Both of these territories indicated that civil court action was available as a remedy. The Government of the Northwest Territories indicated that there are exceptions in a few special cases and the Government of Yukon indicated that in such civil action, the government could be found vicariously liable, but that generally speaking the employee could be prosecuted personally, as a party defendant with the government.

ARTICLE 3

The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Question

What are the factors and difficulties affecting the implementation of article 3?

Partial Reply

SR 211, paras 31 and 37.

Responses Summarized

There was general agreement that the greatest difficulty affecting the implementation is the remaining systematic and social biases strongly entrenched in Canadian society. However, it was also noted that these attitudinal barriers exist in the struggle against discrimination affecting racial groups and handicapped persons as well as women.

1. Equal Rights of Men and Women

Question

How are the various laws enacted to ensure equal rights for men and women applied?

Partial Reply

SR 211, paras 31, 35 and 36.

Responses Summarized

In British Columbia, 27 provincial acts have been modified by The Status of Men and Women Amendment Act to remove discriminatory references. Ontario and Newfoundland indicated that similar measures had been taken and that all prospective legislation is screened. Many provinces have introduced and others are in the process of introducing affirmative action programs to supplement the public education programs already in place. Ontario is

presently examining a Bill which will substantially alter the present code and which has a specific provision protecting women from discrimination in matters of credit. An Ontario Report entitled Today and Tomorrow, (Copy submitted directly to the Secretary General of the United Nations with this Report), outlines government activities with respect to discrimination against women in society. S.1(1)(d) of the Human Rights Act of Prince Edward Island defines "discrimination" in relation to sex as one of the prohibited grounds and this Act prevails over all other provincial laws. In Alberta, any provincial law that operates in a manner that is discriminatory is rendered inoperative by the overriding provisions of the Individual's Rights Protection Act and the Alberta Bill of Rights.

ARTICLE 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes a crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by a State Party to the present Covenant.

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1. Right to life and employment

Question

What criteria determine employers' liability with regard to accidents at work?

Pursuant to the civil law in Québec and to English common law in the other provinces and territories, the employer or any other person, who is responsible for an accident at work may be sued and brought before the court by the victim or a third party who may suffer prejudice because of the said accident or who, in case of death, inherits the rights of the victim. However, federal,

provincial and territorial laws dealing with accidents in the work place preclude people under their jurisdiction, (i.e., most of the employees, except for certain classes of employees such as housemaids, farmers, term employees and individuals working at home) from the traditional form of recourse; legal recourse being the one permitted. The system foreseen by these laws is one of total responsibility. Other than a few minor exceptions, the employer assumes all the responsibilities for accidents to his employees. The protection provided by provincial and territorial legislation has been presented very briefly on page 275 of the Canada Yearbook 1980-81:

> "In Canada, laws governing accidents in the workplace apply generally to the employers in each of the provinces. All provinces provide for indemnification in cases of bodily injury happening during work, unless the period of incapacity is less than a specified number of days or that the injury is due to obvious and voluntary misconduct of the worker, without causing his/her death or serious injury. Professional illnesses can also be subject to indemnification.
>
> Various kinds of compensation are foreseen for employees protected by legislation governing accidents at work. The compensations for injury are based on the percentage of the average daily earnings subjected to an annual ceiling. Persons totally incapacitated on a permanent or temporary basis are deemed completely unable to work and receive 75% of the net value of their average daily earnings (90% of the net value of the earnings in Québec) for the duration of the injury. Partial incapacity gives rights to a proportional indemnity. Compensation for medical and hospital expenses are also awarded.
>
> One of the main objectives pursued by the compensation mechanism is the rehabilitation of injured persons to the work force. Boards can adopt any means they judge necessary to assist the injured persons to return to work or to lessen their handicap.
>
> When a worker dies as the result of a work related accident or of a professional illness, defendants have the right to receive a monthly compensation determined by law. Nevertheless, in recent Alberta and Manitoba cases, widows have received the pensions for total and permanent injury which the workers could have claimed if they had lived. This is also the case in British Columbia where a portion of the entire pension for total and permanent injury is distributed according to the number of dependant children and the age of the invalid widow or widower. In Québec, the surviving spouse and other dependants receive a

percentage of the pension for total and permanent injury according to the number of persons who suffer a financial loss. A monthly allocation can also be provided to each dependant child up to an age limit determined by law or in certain public administrations for as long as the child has not completed his or her studies. If the surviving parent of the child dies, the child becomes eligible to receive a normally higher monthly compensation provided to orphans."

Government Employees Compensation Act, R.S.C. 1970, c. S-8;

Merchant Seaman Compensation Act, R.S.C. 1970, c. M-11;

Workers' Compensation Act, S.A. 1973, c. 87;

Workers' Compensation Act, R.S.B.C. 1979, c. 437;

Workers' Compensation Act, R.S.M. 1970, c. W-200;

Workers' Compensation Act, R.S.N.B. 1973, c. W-13;

Workers' Compensation Act, R.S.N. 1970, c. 403;

Workers' Compensation Act, R.S.N.S. 1979, c. 343;

Workers' Compensation Act, R.S.O. 1980, c. 539;

Workers' Compensation Act, R.S.P.E.I. 1974, c. W-10;

Workers' Compensation Act, R.S.Q. c. A-3;

Workers' Compensation Act, R.S.S. 1979, c. W-17;

Workers' Compensation Ordinance, O.N.W.T. 1977, Vol. 1, c. 7;

Workers' Compensation Ordinance, C.O.Y.T. 1978, c. W-4.1.

Partial Reply

SR 211, para 41.

Responses Summarized

All respondents indicated the existence of statutory provisions for determining liability. In the Yukon, the Workers' Compensation Board assumes responsibility for accidents at work. Under the British Columbia Workers' Compensation Act and the N.W.T.'s Ordinance Respecting Compensation to be Paid as a Result of Injuries or Death Cause to Workers in the Course of Their Employment, the employer is not personally liable but rather

pays into a fund administered by the Workers' Compensation Board which determines an employee's claim. In Saskatchewan, The Occupational Health and Safety Act places the obligation on the employer and quasi-criminal charges may be laid, the onus of proof being on the Crown. The Workers' Compensation Act in Manitoba takes away any right of action which an employee may have against the employer and the claim is handled by the Workers' Compensation Board. Ontario has a similar system. Under the Loi sur les accidents du travail (the Workers' Compensation Act) of Québec, an employee is entitled to benefits but where the responsibility for the accident lies with a person other than the employer, the employee may accept benefits and claim a further amount under the common law from the person responsible up to the total loss incurred as a result of the accident. The Workers' Compensation Act of Nova Scotia and Newfoundland's The Workers' Compensation Act and The Industrial Accidents Enquiries Act contain similar provisions.

In Alberta, most employers within the province are subject to the provisions of the Workers' Compensation Act and the Occupational Health and Safety Act. Under Workers' Compensation legislation an employer is liable for payment to an accident fund of contributions in the manner provided in the legislation, from which compensation is paid in respect of accidents to workers arising out of and occurring in the course of employment. An employer is not permitted to deduct any monies from workers in relation to the employer's liability for compensation payments, nor may a worker enter into an agreement with his employer to waive any benefits that the worker would be entitled to under compensation law. Under the Occupational Health and Safety Act there is a general obligation on the employer to ensure, as far as it is reasonably practical for him to do so, the health and safety of:

a) workers engaged in the work of that employer, and

b) those workers not engaged in the work of that employer but present at the work site at which that work is being carried out.

Question

If an employee refuses to work because of imminent danger to his health or safety, with whom does the burden of proof rest?

Responses Summarized

In the Northwest Territories, the burden lies on the employee and in Ontario and Newfoundland the employee must establish

reasonable grounds for having taken advantage of the right to refuse to work because of a belief in a work-related safety hazard. However, section 48 of The Occupational Health and Safety Act of Newfoundland provides that if an employee is dismissed or disciplined following a refusal to work, there is a presumption of discrimination against the employee and there is an onus on the employer to show otherwise. In Saskatchewan, section 26 of The Occupational Health and Safety Act establishes a similar presumption in favour of the employee. In British Columbia, the Board acts as arbitrator while in the Yukon, the onus is on the employer. Sections 12 to 48 of la Loi sur la santé et la sécurité du travail (Occupational Health and Safety Act) of Québec deal with this question and are reproduced as Appendix V. In Alberta, Section 27 of the Occupational Health and Safety Act, 1976 provides that no worker shall carry out any work nor operate any equipment, tool or appliance where there exists or will cause to exist an imminent danger to that worker or to any other worker on that site. Imminent danger is defined as "a danger not normal for the occupation or a danger under which a person engaged in that occupation would not normally carry out his work".

The responsibility is upon the worker to comply with this requirement and failure to do so is technically an offence under the Act. The worker may exercise no judgement nor right under this legislation but must:

a) recognize the "imminent danger", and

b) refuse to work.

The burden of proof of the existence of an imminent danger lies with the worker.

Having undertaken this responsibility, the worker is protected against dismissl or disciplinary action by the employer. There have been no cases upon which the courts have rendered judgement since the Act came into force in December 1976.

In the Yukon at present, the burden of proof rests with the employee. However, proposed changes to the Occupational Health and Safety Ordinance have been recently tabled in the House in a Green Paper, and these state that: an employee will have the right to refuse any work he feels is dangerous (the word "imminent" being omitted) without fear of recrimination and the burden of proof will rest with the employer.

ARTICLE 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

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1. General Transplant of Human Organs

Question

Is the transplant of human organs regulated by law, by administrative rules or by practice?

Responses Summarized

In the Northwest Territories, the Yukon, Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Prince Edward Island, there is legislation dealing with this question, entitled either The Human Tissue Gift Act or the Human Tissue Act. Articles 19 and 20 of the Code Civil du Québec, (Civil Code), outline the procedures which must be followed and specify that consent must be in writing.

ARTICLE 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

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1. The Right to Liberty

Question

How is the right not to be deprived illegally of liberty respected in practice?

Partial Reply

SR 211, para. 46.

Responses Summarized

In Canada, article 9 of the Canadian Charter of Rights and Freedoms guarantees protection against arbitrary detention. For greater discussion of this point, see Article 9 in the federal responses.

Respondents from the Northwest Territories and Newfoundland indicated that illegal detention was rare and, therefore, did not appear to be a problem. Several respondents noted that in matters of criminal detention, the federal Criminal Code specifies that an arrested person who has been detained must be brought before a Justice of the Peace within 24 hours of arrest. The Offence Act of British Columbia guarantees the right to a phone call and The Mental Health Act provides for a review of a person's involuntary detention after 30 days as well as setting out appeal provisions. The civil action of habeas corpus is also available to persons involuntarily detained under the criminal justice system or the mental health system. Saskatchewan noted that only a limited number of provincial offences provide for the arrest of the accused person and in those cases, as with the federal Code, the person must be brought before a Justice of the Peace within 24 hours of arrest. Manitoba noted that the arresting officer must establish reasonable grounds for having made the arrest and that, in any event, there is the possible sanction of malicious prosecution and false arrest which are civil actions and may be commenced. In Ontario, Legal Aid is available to a person in need who wishes to commence a habeas corpus action and it is also possible to sue for damages due to illegal arrest, the issue to be tried by a jury unless both parties agree to waive that requirement. As well, Ontario reports an unfettered right to complain to numerous levels of police disciplinary bodies up to the provincially appointed Police Commission composed of citizens who are not police officers. The extent of the problem in Québec may be reflected in the following statistics: in 1980, there were three complaints of unlawful detention to the Québec Police Commission, two of which have been dismissed and one of which is being investigated. During the same period of time there were eight complaints of unlawful arrest, two of which have been dismissed, two have been withdrawn by the complainants and four are presently being investigated. The Nova Scotia statutes, Summary Proceedings Act and Liberty of the Subject Act contain provisions to guard against the illegal deprivation of liberty. The Summary Proceedings Act of Prince Edward Island states that the provisions of the Criminal Code apply mutatis mutandis to provincial offences.

In Alberta, the right not to be deprived illegally of liberty is regulated in the province:

a) in respect of the mentally ill, through the legal mechanism of involuntary admissions to mental health facilities whereby the person who is admitted to a mental health facility by either the court or upon two certificates of two physicians has the right of appeal of any decision in respect of his involuntary confinement to a review panel and from there to the courts;

b) in respect of children who are wards of the crown, through a legal mechanism whereby any confinement of the child beyond that normally contemplated as normal parental

discipline, necessitates either a court order or a compulsory care certificate issued by a public official which is subject to the review of the court;

c) in respect of the mentally handicapped, through a legal mechanism whereby any involuntary confinement necessitates a court order or a compulsory care certificate issued by a public official which is subject to the review of the court.

d) in respect of the sufferers of tuberculosis or venereal disease, through a legal mechanism whereby any involuntary committal of a recalcitrant patient necessitates a court order.

Alberta noted that the right not to be deprived of liberty except in accordance with these or any other legal mechanisms may not always be respected in practice, particularly with respect to the mentally handicapped, children and people suffering from tuberculosis. It is hoped that with the proclamation of legislation respecting the mentally handicapped in this regard the rights of these individuals will be protected in that the mere existence of a proper legal mechanism discourages confinement outside the purview of that process. As well, recent attention to the practice of confining children has resulted in an investigation by the provincial Ombudsman and the establishment of a judicial inquiry into child welfare matters. It is anticipated that stricter legal practices will result.

2. Bodies Reviewing Assignment to Psychiatric Hospitals

Question

What is the composition of the bodies alluded to in the report which are responsible for reviewing assignment to psychiatric hospitals?

Responses Summarized

It is important to note that the federal Criminal Code has provisions outlining the establishment of Review Boards composed of provincially appointed members. As well, numerous pieces of territorial and provincial legislation contain provisions for establishing review boards dealing with involuntary detention under the mental health system. In British Columbia, a body of experts is appointed by the Minister of Health to make up a panel which reviews individual cases after 30 days of involuntary detention, then after one year and then every two years thereafter. In Manitoba, The Mental Health Act provides for a Board, the members of which are generally psychiatrists, to be appointed. As well, Manitoba appoints members of the Review

Board under the terms of the Code to examine cases of persons held on Lieutenant Governor's Warrants.[2] Under the terms of The Mental Health Act in Ontario, a regional Review Board which is an administrative tribunal of psychiatrists, lawyers and lay representatives reviews each case when involuntry admission is initially completed and at subsequent intervals thereafter. Section 16 of The Mental Health Act of Newfoundland allows for the apointment of a physician, a barrister and one other citizen to the provincial Review Board. In Saskatchewan, a Review Board has been established under the terms of the Criminal Code, but for involuntary detention under the mental health system, a person may apply directly to the Saskatchewan courts and there appears to be no need for a review system. Section 25 of the Mental Health Act of Prince Edward Island provides for the appointment by the Lieutenant-Governor-in-Council (the provincial Cabinet) of a three-member Review Board, the chairperson being a Judge of the provincial Supreme Court, others being a physician and a third person who is neither a barrister nor a physician. This Board reviews the cases of persons held under the Criminal Code and the Mental Health Act.

The frequency of review varies considerably. The Government of the Northwest Territories reports that a total of 52 days of involuntary committal may pass without any opportunity for an application for review. After that time, a person may apply for judicial review of the decision to detain. In the Yukon, there is a review of involuntary commitment every six months. A person in Prince Edward Island may be held for one month or less as an involuntary patient, after which a review by the attending physician takes place. The attending physician may request a certificate of renewal which expires after two months, with provisions for numerous subsequent certificates of renewal which expire after successively longer periods of time, up to 12 months. Similarly, section 29 provides that persons detained under authority of a warrant of the Lieutenant-Governor in accordance with the Criminal Code must have their status reviewed at least once a year by the Review Board.

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2. Note: While there is no definition of "fitness to stand trial" under the Criminal Code, there are two sections of the Code which address this issue. Under both of these sections, the Judge has the authority to remand an accused for observation for a period not exceeding 60 days where the Judge is satisfied that this is necessary and the Judge's opinion is further supported by the evidence or, where the written report of at least one duly qualified medical practitioner recommends detention and the report has received the consent of the Crown Attorney and the accused person. Where an accused person is found by the Judge to be unfit on account of insanity to stand trial, the Judge should order that any plea that has been pleaded be set aside, the jury discharged and the person kept in custody until the pleasure of the Lieutenant Governor of the Province is known. That is to say, without having been found guilty of any crime, the accused person is involuntarily detained for an indeterminate period of time. The use of Lieutenant Governor's Warrants in Canada is presently being reviewed at all levels of government which have any responsibility in administering these sections of the Code.

Section 12 to 31 of the Loi sur la protection du malade mental (the Mental Patients Protection Act) of Québec has been reproduced in Appendix VI, the patients' rights being especially stated in sections 12 to 20 and 27 to 31.

In Alberta, mental health review bodies consist of:

a) a psychiatrist;

b) a physician;

c) a solicitor (who is chairman) and

d) a person representative of the general public.

Question

Are these judicial bodies or simply bodies of experts without judicial standing?

Responses Summarized

Only Nova Scotia and Newfoundland indicated that the Review Boards were considered to be judicial bodies. Section 27 of the Mental Health Act of Prince Edward Island empowers the Board to conduct inquiries "such as it considers necessary". The Chairperson has the discretion to hear oral testimony, or to hold the review "in camera" or to exclude the patient from the hearing. Alberta indicated that their mental health review bodies consisted of experts which perform a quasi-judicial function and which is subject to an appeal to the courts.

3. Arrests

Question

Can someone be arrested in Canada because of a simple complaint, before any investigation has been carried out to determine whether the complaint is justified?

Partial Reply

SR 211, para 46.

Responses Summarized

The answers to this question varied, depending on the interpretation given to the term "because of a simple complaint, before any investigation has been carried out...". Rather than

summarizing the answers as being affirmative or negative, it would be more accurate to note that in most Canadian jurisdictions, reasonable and probable grounds or belief therein must form the basis for an arrest, under the terms of the Criminal Code as well as provincial and territorial legislation dealing with summary proceedings. For greater elaboration of this point, see the federal government response on this matter under Article 9. For example, Section 4 of the Summary Proceedings Act of Prince Edward Island stipulates that the provisions of the Criminal Code apply "mutatis mutandis" to provincial offences prosecuted under that Act and section 13(1) of the Loi des poursuites sommaires (the Summary Convictions Act) of Québec, requires that a complaint leading to arrest must be based upon reasonable and probable cause. Saskatchewan noted that the requirement of "reasonable and probable cause grounds" necessitates some degree of investigation and it is therefore unlikely that an arrest could be made on the basis of a "simple complaint". Under The Provincial Offences Act, 1979 of Ontario, it is necessary to satisfy a Justice of the Peace that a person accused of a provincial offence must be detained under arrest. Under the Summary Proceedings Act and the Liberty of the Subject Act of Nova Scotia, reasonable and probable grounds must also be established.

Question

How many arrested persons are awaiting trial? How many of them are detained while awaiting trial? Also see statistics under federal government's response to Article 10.

Partial Reply

SR 211, para. 60.

Responses Summarized

The Government of Yukon reported that an average of seven or eight persons are detained while awaiting trial at any one time. British Columbia gave statistics for 1980 noting that the monthly average for persons in custody awaiting trial was 354 whereas during the month of December 1980, 382 persons in British Columbia were in custody awaiting trial. By comparison, a total of 960 individuals were awaiting trial on bail supervision, that is, they were being supervised in the community. Figures for the number of people charged, whose cases were remanded and who were not either in custody or under bail supervision were not available. Saskatchewan indicated that it is extremely unusual to detain persons accused of provincial offences and that the number of persons awaiting trial and on remand for such offences in Saskatchewan is not significant. In comparing the

number of people awaiting trial while out on bail to the number of people awaiting trial held in custody, Manitoba reported that exact figures were not conveniently determinable but that relatively few were held in custody. In Ontario, during the fiscal year of 1979/80, 19,285 people were admitted on remand awaiting trial or sentence. Because of the manner in which statistics are kept in Québec, it was not possible to respond directly to the Committee's question but the following statistics have been provided. In Quebec during 1980, 7,116 persons were in provincial prisons for periods varying from 1 to 5 days and 4,034 persons were encarcerated for periods of less than 24 hours. The average prison population across the year was approximately 807. This number includes persons under Coroner's warrants and those not granted release by the courts prior to their trials. In Nova Scotia, the statistics on the number of arrested persons awaiting trial were unavailable but an average of 52 people at any one time are on remand awaiting trial. In Newfoundland, the present average of those people on remand awaiting trial is 10. In Alberta, persons awaiting trial who are detained are accounted for daily. An indicator of the daily number is given here below for three dates distributed over a one year period.

	MARCH 31, 1980	SEPT. 30, 1980	MARCH 31, 1981
REMANDED	424	457	484
SENTENCED & REMANDED	96	83	112
IMMIGRATION HOLD	0	5	13

Question

In practice, is the right to be informed of the reasons for one's arrest observed in Canada?

Responses Summarized

Although this had generally been held as the law and practice throughout Canada, this right has now been entrenched in the Canadian Charter of Rights and Freedoms which states

"10. Everyone has the right on arrest or detention

a) to be informed promptly of the reasons therefor;

b) to retain and instruct counsel without delay and to be informed of that right.

A simple affirmative answer was given by the Northwest Territories, the Yukon, British Columbia, Manitoba, Newfoundland and Prince Edward Island. Saskatchewan answered in the affirmative noting that the right is generally observed and definitely observed when the person is brought before a Justice of the Peace. Ontario made reference to section 132(2) of The Provincial Offences Act, 1979 as well as section 29(2) of the Criminal Code in its affirmative answer. Provisions of the Liberty of the Subject Act as well as the Summary Conviction Act of Nova Scotia combined with the Criminal Code give an arrested person the right to be informed. Alberta stated that all persons including children, are routinely informed of the reasons for their arrest. In Québec, section 28.1 of Bill 86 (An Act to Amend the Charter of Human Rights and Freedoms), sanctioned on December 18, 1982, recognizes to all accused the right to be informed promptly of the charged against them.

4. Moral Redress

Question

Does a person whose rights under the Covenant have been infringed have legal means of obtaining moral redress?

Responses Summarized

Manitoba, Alberta and the Northwest Territories indicated that they felt the wording of this question, in particular the term "moral redress" was sufficiently unclear as to make an answer impossible. British Columbia made reference to the Human Rights Code, the Ombudsman Act, and the Crown Proceedings Act. The Human Rights Code provides a mechanism for handling alleged cases of discrimination on a wide variety of grounds and compensation may be ordered if the situation warrants it. The Ombudsman Act provides a mechanism for investigating and settling complaints against the actions of government departments, crown corporations, municipalities, regional districts and other bodies. Under the terms of the Crown Prosecution Act, the Crown is subject to all liabilities to which it would be liable if it were a person, thus permitting the Crown to be sued for the wrongful acts of its servants. In Saskatchewan, the infringement of a right covered by The Saskatchewan Human Rights Code can lead to a person making a complaint under that Code but when there is a breach of rights involving a federal body or a criminal offence, such as improper detention, the only redress available to the citizen is by means of a civil suit. On a similar note, Nova Scotia made reference to sections 23, 25 and 29 of its Human Rights Act with emphasis on conciliation and, if necessary, the establishment of a Board of Inquiry with provision for a fine to be levied as a penalty. Ontario indicated that moral redress through legal means was unknown in that province.

If it is understood that the term "moral redress" refers to assistance from government established agencies then the references to the various pieces of human rights legislation as well as the legislation in the provinces having established an office of the Ombudsman (in Québec, The Public Protector) are the most likely answers to this question.

Quebec refers members of the Committee to page 532 of the French version of Canada's Report.

ARTICLE 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

   b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segragated from adults and be accorded treatment appropriate to their age and legal status.

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1. Penitentiaries and prisons

Question

Are there supervisory or inspection organizations to ensure that prison authorities respect the various provisions designed to protected prisoners?

Responses Summarized

Québec made reference to the Règlement relatif aux établissements de détention (Regulation respecting Houses of Detention). The Director General of Houses of Detention has the discretion under section 2 to take the necessary measures to ensure impartial application of the Loi de la probation et des établissements de détention (The Probation and Houses of Detention Act) and with proper regard for the human dignity of imprisoned persons, without distinction, exclusion or preferences based on race, colour, sex, sexual orientation, civil status, religion, political convictions, language, ethnic or national origin, social conditions or the fact that the person is handicapped or that the person uses any means to palliate his or her handicap. Section 4 deals with the rights of confidentiality protecting

any mail or parcel sent to or by an imprisoned person to the Public Protector or the Human Rights Commission. Section 21 gives to the imprisoned persons the right to submit a written complaint to the warden of the house of detention or to an officer designated for such a purpose. The complaint must be answered in writing and if the imprisoned person does not feel a fair reply has been received, the complaint may be addressed again to the Director General or an officer designated for such purpose. The Province of Newfoundland noted that while there is no formal mechanism for independent inspections, there are a number of informal means by which the prisons are visited. Legal counsel and members of the provincial House of Assembly have unrestricted access; the fire commissioner makes an annual inspection; and representatives of the Human Rights Commission and the Human Rights Association have access on request.

2. Prisoners' rights

Question

May a detainee appeal a decision by a disciplinary tribunal?

Responses Summarized

Newfoundland indicated that there does not exist a statutory right of appeal except by way of an appeal to the Superintendant who may suspend any such punishment.

Question

Is there a law stating that a prisoner should serve his sentence in an establishment not too remote from his home?

Responses Summarized

None of the respondents reported the existence of such a law. Manitoba noted that the length of a person's sentence was a determinant as to the location of the establishment in which the sentence is served, that is to say, sentences of two years or less are generaly served in provincial jails and thus likely to be closer to the prisoner's home whereas sentences of greater than two years are generally served in federal prisons. The Government of Yukon noted that it is common practice to accept Yukon residents convicted and sentenced in other courts as well as to transfer residents of other regions who have been convicted in Yukon courts to their home regions. Québec reported that in

1980, 85% of imprisoned persons were held in their own regions, and that a federal-provincial agreement has been reached allowing women from Québec to serve their federal sentences in Montréal rather than the federal penitentiary for women in Kingston, Ontario. British Columbia, Saskatchewan, Prince Edward Island and Ontario all mentioned concerted attempts in those respective provinces to place people as close to their home regions as possible and, therefore, to a considerable degree, this accommodation is the established policy. Newfoundland reported that the provincial policy of regionalization is reflected in the redistributing of cell spaces by relocating a number of the cells in the capital of St. John's to smaller regional facilities.

ARTICLE 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equity:

   a) To be informed promptly and in detail in a language which he understands of the nature and causes of the charge against him;

   b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   c) To be tried without undue delay;

   d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him inany such case if he does not have sufficient means to pay for it;

   e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

   g) Not be be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributal to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

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1. Judicial system

Question

How is the independence of judges guaranteed?

Responses Summarized

Most of the respondents pointed out the distinction between provincially appointed judges and federally appointed judges and directed their remarks to the former. The concept of judicial independence from government is continued in Canada more through tradition and practice than specific statutory provisions. The Government of Yukon noted that the statutory provisions for dismissal procedures ensure that judges are dismissed only for special cause related to their ability to perform their judicial duties, and only after an inquiry by a superior court. Saskatchewan and Ontario observed that the independence of judges is often emphasized by practices of the government even though the Constitution Act, 1867 gives to the provincial government full responsibility for the maintenance and organization of the provincial courts. The Provincial Judges Act of Manitoba states that a judge's appointment continues until he or she reaches the age of retirement with provision for the dismissal only in cases

of misconduct or inability. The Provincial Court Act of Newfoundland provides that the court and every judge thereof has jurisdiction throughout the province; the general supervision and direction of the administration of the court being the responsibility of the Chief Provincial Court judge. Every judge is paid out of the Consolidated Revenue Fund of the Province. A salary is fixed by the Lieutenant-Governor-in-Council (the Cabinet) by regulations passed under this Act. Each judge holds office for one year after his or her appointment during pleasure and from then on during good behaviour. The Code of Conduct adopted by the Judicial Council of Québec is reproduced in Appendix VII.

In Alberta, the Provincial Court Act, S.A. 1978, c. 70, s. 7, ss.2, provides that, subject to the removal or retirement of a judge from office upon the recommendation of the Judicial Council, no judge may be removed from office before attaining the age of 70 years.

In British Columbia, judges hold office until age 65 and may elect to serve as a supernumerary judge until age 70. A judge may only be dismissed prior to this time for acts of misconduct or disability.

In Québec, section 82 of the Courts of Justice Act, R.S.Q. c. T-16, requires that judges devote themselves exclusively to their judicial duties. In accordance with section 85 of the Act, judges may be dismissed upon a report of the Court of Appeal made after an inquiry upon the request of the Minister of Justice.

Question

What is the procedure for appointing judges?

Partial Reply

SR 211, para 55.

Responses Summarized

Appointments in the Northwest Territories are made by the Commissioner upon recomendation of a Judicial Council. In Saskatchewan, recommendations for people to be appointed as judges are made to the Judicial Council of Saskatchewan which considers these recommendations and then notifies the Attorney-General who then brings recommendations for appointment to the Provincial Cabinet. Section 2 of The Provincial Courts Act of Ontario provides for a judicial council to advise the Attorney-General on appointments and to deal with complaints and allegations as to misconduct of judges. The Provincial Court Act of Prince Edward Island empowers the Lieutenant Governor in Council to appoint as judges persons who are members in good

standing of the Law Society and who have been members in good standing at a Canadian provincial bar for at least five years immediately preceding their judicial appointment. In Newfoundland, the Lieutenant Governor in Council may, upon recommendation of the Minister of Justice and the Attorney-General appoint judges of the provincial court as such appointments are considered necessary. It is open to the Minister to ask the judicial council to consider proposed appointments and to report thereon to the Minister. The procedure in Québec for selecting appropriate persons to be named as judges is outlined in the Courts of Justice Act, R.S.Q. c. T-16 (submitted to the Secretary General of the United Nations with this report).

In British Columbia, under the Provincial Court Act a Judicial Council has been appointed to consider proposed appointments of judges. The Lieutenant Governor in Council then appoints judges on the recommendation of the Judicial Council.

Question

Who is empowered to dismiss them? On what grounds?

Responses Summarized

In British Columbia, the Cabinet is empowered to dismiss only after an internal investigation conducted by a judicial council recommends such action. Grounds for dismissal include physical and or mental deterioration, bias, misconduct, other relevant factors which prevent the judge from carrying out his or her duties as outlined in section 17 of the Provincial Court Act. The Lieutenant-Governor in Council of Saskatchewan following the procedure established under section 17 of The Provincial Court Act may dismiss a judge if the judge has:

a) conducted himself in a manner which compromises his or her ability to perform the duties of the office;

b) has specifically neglected his or her duties; or

c) is incapable of performing his or her duties in a proper manner.

In Manitoba, dismissal takes place after an inquiry by the Judicial Council and disciplinary measures are taken in accordance with The Provincial Judges Act. In Ontario, although the government in power appoints and dismisses judges, such actions are seen to be free of purely political considerations in that the only relevant measure is seen to be the judge's incapacity to continue in office. Section 4 of The Provincial Courts Act of Ontario provides for removal of judges for misbehaviour or inability. The Judges of the Provincial Court Act of Nova Scotia provides for dismissal of judges by Order of

the Governor in Council (the Cabinet). In Newfoundland, section 19 of The Provincial Court Act specifies that a judge holds office for the first year during pleasure and henceforth during good behaviour. The Chief Justice may reprimand or recommend suspension of a judge. If a judge is suspended by the Lieutenant-Governor in Council, there is an inquiry before the Judicial Council and if the Judicial Council reconfirms the Cabinet's decision, then the judge is removed from office. In Prince Edward Island, the Provincial Court Act empowers the Lieutenant Governor in Council to suspend a judge from performance of the duties of his office where there is reason to believe that a judge is guilty of misbehaviour or is unable to perform the duties of the office properly. Sections III and IV of the Courts of Justice Act of Québec outlines the procedure to be followed by the Judicial Council and, if a complaint is founded, by the Minister of Justice and Attorney-General in disciplining a judge. (Copy submitted directly to the Secretary General of the United Nations with this Report). In Alberta, the Provincial Court Act, 1978 provides that the Judicial Council may recommend a removal or retirement of a judge from office to the Lieutenant Governor in Council on the basis of lack of competence, misbehaviour, or neglect of duty. (See now: 1981 Bill 36, The Provincial Court Judges' Act).

Question

Who monitors police activities? The courts? The government?

Responses Summarized

The Government of the Northwest Territories indicated that both the courts and government monitor police activities whereas the Government of Yukon noted that there is no statutory provision for monitoring police activities and there is no office of the Ombudsman in that territory. In British Columbia, both the courts and government monitor the police under the terms of The Police Act and the Disciplinary Code. As well, civil and criminal actions may be taken against police officers. The provincial Attorney-General of Saskatchewan has authority over provincial police and there is a Police Commission to deal with citizens' complaints. Saskatchewan noted that the monitoring of police activity is the result of efforts on the part of citizens, the courts, government and members of the various media. Police in Manitoba are monitored by police commissions appointed by the provincial and municipal governments as well as by their own internal procedures. The Solicitor-General of Ontario through the Police Act and its regulations has general supervisory power. The Ontario Police Commission investigates municipal and provincial police but there are also locally appointed police commissions to deal with local police problems, subject to the jurisdiction of the Ontario Police Commission and the Solicitor-General. In Ontario, courts do not monitor police

activities. Section 4 of the Police Act of Nova Scotia establishes a Police Commission which monitors police activities in that province. In Newfoundland, The Constabulary Act assigns administrative responsibilities to the Minister of Justice. The federal Royal Canadian Mounted Police also operate in the province and a contract between Newfoundland and the federal government provides that the R.C.M.P. are responsible for the policing of offences under the Criminal Code, but not for other federal statutes. At present, there are no plans for the establishment of a police commission. The Police Act of Prince Edward Island contains similar provisions to that of Newfoundland for members of the R.C.M.P. acting as Prince Edward Island Provincial Police. Section 2(2) of that Act specifies that members of the police force are responsible to the Minister of Justice of Prince Edward Island in accordance with the duties and powers of the police as defined in the Act. Section 12 of that Act precludes any legal action being taken against a member of the police force if the member did the act "in reasonable discharge of duty" and where a member of the force was acting under the instructions of the Minister of Justice or a commanding officer, that member cannot be convicted for violation of any provincial offence if the action was taken for the purpose of obtaining evidence. In Alberta, The Police Act, 1973 S.A. 1973, c. 44, provides that a municipal police commission is responsible for the policing and maintenance of law and order in the urban municipality subject to the responsibility of the Attorney General for Alberta in respect of the administration of justice and the enforcement of those laws which the government of Alberta is required to enforce (sections 22, 23 and 25). In Québec, the minister of Justice, the Police Commission and the courts ensure the control of police activities.

2. In camera proceedings

Question

Are there legislative provisions in accordance with the Covenant concerning the conditions under which trials are held in camera?

Responses Summarized

The Government of Yukon answered in the affirmative for family and juvenile matters. In British Columbia, trials are open to the public, but names may be withheld from publication, and in order to hold an in camera trial, permission must be granted from a judge under the terms of the Criminal Code. Saskatchewan reported that the trial of a provincial offence may be held in camera if it is determined to be necessary to preserve public order or morality or to protect the reputation of juveniles. In Manitoba, the Juvenile Court is open to the public but no

publicity is allowed. Other in camera trials are held only in exceptional criminal cases. The Provincial Offences Act, 1979 of Ontario permits exclusion of the public at the power of the court when necessary to: maintain order; protect the reputation of a minor; or to remove influences which might affect the testimony of a witness. To protect the reputation of a minor the court can also prohibit publication on broadcasting of his or her identity or of certain pieces of evidence. A defendant can be excluded if his or her behaviour is so disruptive that continuation of the trial is not feasible or if the defendant's presence, at a trial the issue of which is the defendant's capacity to stand trial, would adversely affect the defendant's mental health. Section 23 of Québec's Charte des droits et libertés de la personne (Charter of Human Rights and Freedoms) provides for in camera trials in the interest of morality or public order or in the interest of children. Section 5(2) of the Family Court Act of Nova Scotia guards against publicity. In Newfoundland, The Summary Proceedings Act sets out provincial enforcement procedures and adopts section 442 of the Criminal code which allows the holdings of a trial in camera in the interest of public morals, maintenance of order or where the proper administration of justice demands exclusion. As well, The Provincial Court Act allows for an in camera trial in matters dealing with the discipline of a judge, and The Welfare of Children Act allows for trials to be held in camera when the defendants are juveniles. The Children's Protection Act of Prince Edward Island contains similar provisions.

In Alberta, in camera proceedings are occasionally used respecting child welfare matters and are subject to the conditions that:

a) the hearing not be held in ordinary police courtrooms unless no other place is available and then only one hour after any preceding trial has ended;

b) counsel, officers of the law, any child welfare worker connected with the case, the director of child welfare or his representative, may be excluded from the proceedings where the judge considers it desirable.

In Alberta in camera proceedings respecting compulsory care treatment of sufferers of venereal disease are subject to the condition that they may be so conducted only where it is shown to the court that the giving of evidence that a person whose identity must be revealed is suffering from venereal disease will cause unnecesary hardship to that person. In camera proceedings respecting mentally ill persons are subject to the condition that the patient and his representative have the right to be present unless in the opinion of the review panel there may be an adverse

effect upon the patient, in which case the panel is required to appoint a person to act on his behalf if he does not already have a representative.

3. Presumption of innocence

Question

Do authorities other than the courts observe the principle of presumption of innocence?

Responses Summarized

The Canadian Charter of Rights and Freedoms guarantees that any person accused of a criminal offence is presumed innocent (article 11(d)).

None of the respondents answered the first part of this question in the negative. However, Saskatchewan noted that in certain circumstances there will be a shift of onus upon the proving of certain facts. Ontario noted that the presumption of innocence is primarily an evidentiary doctrine which does not preclude pre-trial detention if the defendant is unlikely to attend trial or likely to commit offences having been released. In Québec, the presumption of innocence is codified in section 33 of the Charter of Human Rights and Freedoms while section 23 entitles every person to an impartial hearing and section 56 covers hearings before quasi-judicial authorities as well. The Summary Proceedings Act of Nova Scotia has a similar presumption of innocence as stated in the Criminal Code. Newfoundland stated that the authorities of that province are bound by statute law and common law, both of which contain this presumption of innocence. In Alberta, authorities other than the court do observe the principle of the presumption of innocence.

Question

In particular, can the public prosecutor refrain from taking legal action but state publicly that he considers the accused to be guilty?

Partial Reply

SR 211, para 59.

Responses Summarized

The Government of the Northwest Territories indicated that a prosecutor could behave in that manner in theory but would be open to a civil suit and the Government of Yukon indicated that such behaviour is generally not permitted. A prosecutor in Saskatchewan who behaved in such a manner would be open to censure and rebuke by his or her employer. Manitoba simply stated that in practice a prosecutor would not make such a foolish statement. Such behaviour is unknown in Québec and if it were to take place, the prosecutor would be liable to action in damages as well as to removal from office. Section 7 of the Prosecuting Officers Act of Nova Scotia provides for the removal of officers who do not fulfill their duties properly. The Province of Newfoundland replied that there are occasions when, for one good reason or another, the prosecutor will refrain from taking action on a prima facie case; however, this does not preclude the complainant or some other person from initiating proceedings. Where the prosecutor so refrains, he must gauge any public statements of condemnation in light of the law of libel, slander and defamation, both civil and criminal. As a matter of policy in Newfoundland and Prince Edward Island, public statements in such circumstances are more than unusual. In British Columbia, a prosecutor may not refrain from taking legal action but may use prosecutorial discretion to enter a stay of proceedings. A prosecutor who publicly stated that he considered th accused to be guilty is such a case could be open to such charges as slander and libel and could face disciplinary action from his employer. In Ontario, the prosecutor would be subject to censure if he made such allegations. In addition, the Attorney General himself might face hostile questionning in the Legislative Assembly. In Alberta, the public prosecutor cannot refrain from legal action but state publicly that he or she considers the accused to be guilty.

Question

Can an accused person accept a penalty to avoid standing trial?

Responses Summarized

Once again, answers to this question differed depending upon the interpretation of the wording. As pointed out by the province of Newfoundland, a guilty plea in effect constitutes a trial and there is nothing in Canada similar to the American plea of "no

contest". That is, in Canada, a refusal to plead on the part of the accused is considered to be a plea of not guilty. In the City of St. John's in Newfoundland, a diversion program has been initiated to provide for "penalties" for juveniles to take place without the laying of charges. Of those respondents who answered in the negative - Nova Scotia, Québec and British Columbia - British Columbia noted that even when someone pleads guilty to a lesser offence, there is still a trial and Nova Scotia indicated that trials must be held for persons accused of criminal offences. Saskatchewan indicated there are certain offences for which a person may pay a fine after volunteering a guilty plea, but Ontario noted that even after pleading guilty, if a defendant disputes any aspect of the charge, a trial may be held. In Manitoba, this practice occurs for minor offences usually to traffic violations. Alberta indicated that an accused person can accept a penalty and avoid standing trial by pleading guilty.

4. Right to counsel

Question

Are the services of a lawyer expensive to retain?

Responses Summarized

The following respondents answered in the affirmative: Northwest Territories, British Columbia, Yukon and Nova Scotia. Newfoundland indicated that the Law Society has instituted a recommended fee schedule and that those fees are not out of line with fees in other provinces. Ontario reported that for some people, the services are considered to be expensive. The Loi sur le Barreau du Québec (Act respecting the Barreau of Québec) establishes a General Council which determines legal costs and fees which in turn are approved by the government and re-examined periodically.

Question

Is there a legal aid system whereby those who cannot afford a lawyer can obtain the assistance of a representative?

Responses Summarized

All of the respondents indicated that there are legal aid systems in all of the territories and provinces. British Columbia and Newfoundland indicated that legal aid was available but that recipients must show need, the usual test being, whether the

action is posing a threat to a person's livelihood. In Saskatchewan, there exists a legal aid scheme whereby persons who cannot afford to retain their own legal counsel have benefit of state-paid counsel. Legal aid is available for both civil and criminal cases to persons in need in Manitoba. The Legal Aid Act of Ontario provides legal assistance for those who cannot afford to pay. However, there is entitlement to free legal assistance when a person is charged with an offence carrying a penalty of more than six months imprisonment. Where the offence carries a penalty of less than six months then the test is whether the person is likely to suffer a loss of livelihood. Legal aid is available on a discretionary basis in the Family Division of the Provincial Court and also for cases which a person wishes to appeal. There is a Legal Aid Act in both Prince Edward Island and Nova Scotia which establishes a system of legal assistance for people who are in need and cannot afford to pay the full cost of legal action. At page 538 of the French version of Canada's Report, it is noted that the right to defense counsel at no cost is confirmed in Québec law by article 4 of the Loi de l'aide juridique.

5. Compensation for a conviction resulting from a miscarriage of justice

Question

In cases of miscarriage of justice, Canada provides only for ex gratia compensation, whereas the terms of the Covenant are broader in this respect. What is Canada doing to remedy this situation?

Responses Summarized

Grave reservations were expressed by the Province of Ontario about institutionalizing such compensation if the net effect would be to:

1) confuse the processes of the criminal law and civil law;

2) make criminal prosecutions more difficult; and

3) result in greater compensation to wealthy people thereby lessening the liability of the state to poor accused persons.

In Québec, a task force has been set up to examine this question and has made recommendations to the Minister of Justice of that province. This matter is also under consideration in the provinces of Nova Scotia and Saskatchewan. No legislation or policies for such compensation exist in the Yukon, Manitoba,

Newfoundland or Prince Edward Island. In British Columbia, no legislation or policy exists for such compensation.

ARTICLE 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

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1. Retroactive Laws

Question

Is it possible to enact retroactive laws in civil law?

Responses Summarized

All of the respondents answered in the affirmative and all of them noted that this is not frequently done. Saskatchewan went on to say that the statute must be clear in its terms to be retroactive and Manitoba indicated that such action is usually taken to cure previous defects or errors. Québec acknowledged the supremacy of Parliament but noted that no regulations made under an Act may have retroactive effect, and if this were done, the regulation would be ruled ultra vires by the courts. Québec also noted that retroactivity cannot affect acquired rights in accordance with the Loi d'interpretation (The Interpretation Act, sections 12, 45, 50). Nova Scotia noted that there are strong Common Law principles disallowing retroactivity in penal legislation.

Question

Have retroactive laws been enacted by the federal Parliament or the provincial legislatures?

Responses Summarized

British Columbia gave as an example section 18 of the Social Services Tax Amendment Act, 1980 and Saskatchewan noted that such

laws are mainly monetary or passed to correct where the intent of the legislation has not been applied. In addition to the points raised by Saskatchewan, Ontario noted that retroactive laws have been passed to codify existing practices and to attach benevolent consequences to a prior event. Alberta indicated that retroactive law was enacted in 1974 in respect of The Ophthalmic Dispensers Act, S.A. 1974, c. 75, whereby the qualifications for admission as a member of the Guild of Ophthalmic Dispensers were amended retroactively to include anyone who had been practicing as an ophthalmic dispenser on July 1, 1965. In Québec, the National Assembly has enacted one retroactive law, An Act Respecting the Constitution Act, 1982, S.Q. 1982, c. 62.

ARTICLE 16

Everyone shall have the right to recognition everywhere as a person before the law.

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1. Recognition of a Child Conceived

Question

Is the principle whereby a child conceived is considered to be born recognized in the law of inheritance and in criminal law?

Responses Summarized

The provinces of Nova Scotia and Manitoba indicated that this principle is not generally recognized. In the law of inheritance, the principle is recognized in the Northwest Territories, the Yukon, in Saskatchewan under The Intestate Succession Act, in Ontario under The Succession Law Reform Act as well as at common law, providing the child is born alive, in article 608 of the Code Civil du Québec providing the child is born viable, and in The Wills Act and The Intestate Sucession Act of Newfoundland. In Alberta, the principle whereby a child conceived is considered to be born is recognized in the Law of Inheritance. In British Columbia, this principle is recognized provided that the conceived child is born alive as is defined under the Family Relations Act, R.S.B.C. 1979, c. 121 and applied to the Wills Act, R.S.B.C. 1979, c. 434.

2. Civil Death

Question

Does the concept of civil death exist in Canadian law?

Some confusion existed as to the meaning of the term "civil death". Generally speaking the idea of outlawry was abolished in Canada. Some provinces referred to a civil presumption of death.

Responses Summarized

British Columbia, Ontario, Nova Scotia and Newfoundland all indicated that this concept is not recognized in those provinces. In Québec, the concept of civil death does not exist. The Government of Yukon noted that outlawry does not exist but, as in the Northwest Territories, a presumption of death does. In Saskatchewan and Prince Edward Island, a person may be declared dead where there is not proof of that person's existence after a specified period of time. The Marriage Act of Saskatchewan and the Marriage Act of Prince Edward Island provide

for certificates of presumption of death to enable remarriage of the surviving spouse. The Presumption of Death Act of Manitoba contains this concept as well.

ARTICLE 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

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1. Education and religion

Question

Certain provisions of Nova Scotia and Ontario Education Acts appear discriminatory. Could further information on this subject be supplied?

Responses Summarized

This question was directed to the provinces of Nova Scotia and Ontario. In Nova Scotia, section 74(f) of the Education Act enunciates principles of Christian morality. Section 3(a) of the Human Rights Act of Nova Scotia, states that religion and creed are grounds on which a person may not be denied admission to and enjoyment of "services and facilities customarily provided to members of the public".

Ontario indicated that section 235(1)(c) of the Education Act stipulates that one of the duties of the teacher is "to inculcate by precept and example respect for religion and the principles of Judeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other

virtues". Although this section refers only to the Judeo-Christian religions, in all Ontario school systems, efforts are made to provide instruction concerning the beliefs of other religious groups. This practice is also in line with the guarantee of freedom of religion, prescribed in the Canadian Charter of Rights and Freedoms.

ARTICLE 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   a) For the respect of the rights or reputations of others;

   b) For the protection of national security or of public order (ordre public), or of public health or morals.

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1. Freedom of opinion

Question

Is discrimination on the grounds of political or other opinion prohibited?

Partial Reply

SR 211, para 9.

Responses Summarized

The human rights legislation of the following provinces does not contain the prohibition against discrimination on these grounds: Northwest Territories, Yukon, Saskatchewan and Nova Scotia. The Human Rights Code of British Columbia prohibits discrimination on the grounds of political belief and makes it illegal to publish signs indicating an intention to discriminate. As well, the B.C. Code contains a rather unique clause which does not allow denial of service without "reasonable cause" being proven. The Human Rights Act of Manitoba does prohibit discrimination on the grounds of political belief whereas the Ontario Human Rights Code prohibits discrimination because of "creed" which the Commission has interpreted to include political belief. However, this

interpretation has never been tested by a Board of Inquiry or the courts of Ontario. For further information as to the terms of Québec's protection see the French version of Canada's Report at pages 541 and 542. The Newfoundland Human Rights Code contains a provision prohibiting discrimination on the grounds of political belief, as does the Human Rights Act of Prince Edward Island, but only for those whose political belief meets the definition of being registered under section 24 of the Election Act. It is up to the Chief Election Officer to determine whether a party's application to be registered is acceptable in the terms of the Election Act. Alberta indicated that discrimination on the grounds of political or other opinion would appear to be prohibited on the basis that such discrimination is an infringement of freedom of speech.

It is possible that the Canadian Charter of Rights and Freedoms will have some effect on this matter (See federal government response on Article 19).

2. Freedom of expression

Question

May the decision of film censors be challenged?

Responses Summarized

Films in the Yukon and the province of Manitoba are not censored. In Manitoba, they are classifed under The Amusements Act. In the Northwest Territories there is no appeal from the decision of the censor unless an appeal is made to the courts on the argument that the censor did not act within proper jurisdiction. In British Columbia, there is a government appointed appeal board and, generally speaking, second hearings are granted on an informal basis. Censorship also takes the form of charges laid against films under the obscenity provisions of the Criminal Code and by officers of the Canada Customs exercising control over what films are allowed into the country. The Theatres and Cinematographs Act of Saskatchewan provides that decisions of the Film Classification Board may be appealed to a committee appointed by Cabinet. In Québec, the Loi sur le cinéma (the Cinema Act) provides that any person who submits a film to the Board may appeal the Board's decision by way of a registered letter to the President of the Board, which, sitting in revision, will make a final decision. Section 3(4) of the Theatres and Amusements Act of Nova Scotia makes provisions for appeal. In Newfoundland, The Censoring of Moving Pictures Act does not contain an appeal procedure but because the decision is considered to be quasi-judicial in nature, it is possible to apply to a court of review for an application to quash the

decision by way of writ of certiorari. In Alberta, the Amusements Act, R.S.A. 1970, c. 18, provides that "there shall be an appeal from the censor or Board of Censors to the person, body or court designated by the regulations and subject to the conditions prescribed in the regulations."

ARTICLE 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security of public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

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1. Right to peaceful assembly

Question

Is political opinion considered grounds for restricting exercise of the right of peaceful assembly in Canada?

Responses Summarized

All of the respondents answered in the negative but Manitoba qualified the statement by noting that the preaching of sedition at a peaceful assembly is not allowed.

Question

Apart from any political restrictions which may exist, is the right of peaceful assembly regulated in Canada? In particular, must authorization be obtained before holding public meetings? In such authorization is refused, may the decision be appealed?

Responses Summarized

The province of Québec has forwarded a decision of the Supreme Court of Canada, which was felt to be relevant to this question. (Copy submitted directly to the Secretary General of the United Nations with this Report).

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

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1. Minimum age for marriage

Question

In some provinces, the minimum age for marriage has been raised. What is the current trend in Canada in this matter?

Responses Summarized

Maintenance of the status quo was perceived as desirable by respondents from the Northwest Territories, the Yukon, British

Columbia, Prince Edward Island and Manitoba. In British Columbia, marriage under the age of 16 requires the consent of a judge as well as the parents involved. From 16 to 19, only parental consent is required and once the age of majority - 19 - is attained, adults are free to marry whom they choose. In Saskatchewan, court permission is required for people under the age of 16 to marry and between the ages of 16 and 18, the permission of parents, or the guardian, or the court is needed. In Ontario, the minimum age is 16. In Québec, the Code Civil du Québec was amended as of the 2nd of April, 1981. Article 402 states that people under the age of 18 are not able to marry except that article 403 allows a court to give a dispensation after having received the opinion of the persons who have parental authority for those wishing to marry between the ages of 16 and 18. A minor also may ask the dispensation of the court. Section 18 of the Solemnization of Marriage Act of Nova Scotia prohibits marriage for those under the age of 16 except where it is "expedient and in the interests of the parties". Persons under the age of 19 may not marry without consent in Newfoundland unless they are under the age of 19 and the young woman is pregnant and the parents consent or if the parents refuse to consent, a court may give permission to marry. The Marriage Act of Prince Edward Island prohibits marriage of persons less than 16 years of age except in the cases of a pregnant female or a female who is already the mother of a living child. In these circumstances, the young woman may marry with the consent of their parents or guardian or where they have obtained an order from a Judge dispensing with consent. Alberta indicated that no consideration is being given to changing the minimum age for marriage which is 18 for males and females and 16 with the conset of parents, or under 16 if the female is pregnant or the mother of a living child.

2. Status of natural, adulterine and incestuous children

Question

What is the status of natural, adulterine and incestuous children?

Partial Reply

SR 211, para. 61.

Responses Summarized

Only in the province of Saskatchewan, Ontario and Québec is the distinction between legitimate and illegitimate no longer

relevant. In these provinces, all children have the right to inherit and to apply for maintenance support. Under article 569 of the Civil Code of Québec, paternal and maternal affiliation are proved by the act of birth, not withstanding the circumstances of that birth. In the Northwest Territories, such children are considered to be dependants of their parents and in the Yukon, they are considered to be the dependants of the mother, unless the contrary is proven. In British Columbia, adulterine children are presumed to be legitimate unless otherwise proven; children of incestuous parentage are considered to be the illegitimate offspring of the mother. British Columbia noted that the term "natural child" is not defined in the laws of that province. In Newfoundland, a child born inside marriage is considered to be legitimate and one born outside marriage to be illegitimate whereas a child born of an adulterous union is presumed to be legitimate but that presumption is rebuttable. The Children's Act of Prince Edward Island states that children born to a married mother are presumed to be legitimate and children born out of wedlock are presumed to be illegitimate.

In Alberta, natural, adulterine and incestuous children are not treated equally under the law of the province with legitimate children. However, these children do have certain rights, such as:

a) the right to maintenance orders against the putative father or the mother,

b) the right to compensation as a dependent under the Workers' Compensation Act,

c) The right to use the name of the putative father where the putative father has acknowledged his paternity,

d) the right to relief against the estate of the mother or the father under the Family Relief Act,

e) the right to inherit from the deceased intestate mother or the deceased intestate father if the father has left no lawful issue and has acknowledged the child or was declared to be the father during his lifetime.

Question

May they claim their parents' protection?

Partial Reply

SR 211, para. 61.

Responses Summarized

The Northwest Territories, Saskatchewan, Ontario, Québec and Nova Scotia all indicated that the protection of both parents may be claimed. British Columbia indicated that an illegitimate child may only claim the protection of its mother, as is the case in Newfoundland unless the child is born of a common law union of two years or more duration at which time the child may claim protection of both parents. The Family Law Reform Act of Ontario stipulates that every parent is obligated to support an unmarried child up to the age of 18 unless the child is 16 or over and has voluntarily withdrawn from the family unit. Under the Civil Code in Québec, all children have the same rights and obligations, not withstanding the circumstances of the birth. Section 80 of the Children's Act of Prince Edward Island stipulates that the father and mother of a child are considered to be the joint guardians with equal say in the custody, control and education of that child. In Alberta, the child may claim the parent's protection by way of an application for guardianship or for custody or access under the Domestic Relations Act.

Question

Do they have their father's or mother's name?

Question

To what extent is the child's right to a name affected by the fact that he is adulterine?

Responses Summarized

In the Northwest Territories, such children have the name of their mother unless the father consents to the use of his name. The child of a married couple in Saskatchewan has the husband's surname whereas illegitimate or adulterine children may be registered under either the father's or the mother's name, as requested. In Ontario, The Vital Statistics Act provides that children of a married woman have the husband's name, children of an unmarried women have her name but a father may formally

request a change of the record to his name and it is also possible to use hyphenated last names. Section 56.1 of the Québec Civil Code provides that the child's name is to be at the choice of the mother and father, being the surname of one of them or consisting of no more than two parts coming from each parent's surname and one or more given names. The Vital Statistics Act of Nova Scotia requires a child of an unmarried mother to have her name and makes no statement with regard to the name of the father. In Newfoundland, The Change of Name Act has implications in this area, but generally speaking, legitimate children are given their father's name and illegitimate children are given their mother's name. Section 4 of the Vital Statistics Act of Prince Edward Island specifies that the child of a married women has the surname of the husband and that the particulars of the husband are to be given as those of the child's father except where the mother files a statutory declaration that her husband is not the father of the child and then the child may be given the surname of the person "acknowledging himself to be the father". Another provision of this Act states that the child of an unmarried woman is to have the surname of the mother except where the mother and the person acknowledging himself as the father request in writing, that the child be registered in either the father's surname or both surnames. In British Columbia, under the Vital Statistics Act, S.B.C. 1979, c. 425, the child of a married couple has the husband's surname. An illegitimate child or an adulterine child may be registered under either the surname of the mother or the father. In Yukon, adulterine children are the children of the mother's marriage unless the contrary is proven.

3. Legitimization of children

Question

What are the administrative and legal procedures for legitimizing children, whether natural, adulterine or incestuous?

Responses Summarized

The Government of the Northwest Territories reported that children resulting from incest cannot be legitimized whereas other children may be legitimized by the marriage of their parents. In Yukon, Saskatchewan, Manitoba and Newfoundland, children are legitimated automatically by the subsequent marriage of the parents. In Saskatchewan, the administrative procedure consists of a statement by both parents and in Newfoundland, the parents are required to file a statement with the Registrar of Vital Statistics. Under the Change of Name Act of Prince Edward Island, it is necessary to first obtain consent of a judge of the Supreme Court of Prince Edward Island to change the name of an infant. This consent is to be filed with the Director of Vital Statistics and a notice is to be published in the Royal Gazette.

Where the parents subsequently intermarry and make the request for the change of name, the birth certificate is amended by the Director of Vital Statistics who shall register the birth as if the parents had been married and withdraw the original registration, to be kept sealed in a separate file.

The legislation in Ontario and Québec removing any distinction between legitimate and illegitimate children has done away with administrative and legal procedures for legitimizing children as all children are considered to be legitimate. In Nova Scotia, the Family Maintenance Act recognizes all children, regardless of their parental status, for the purposes of that Act. In British Columbia, under the Legitimacy Act, R.S.B.C. 1979, c. 232, a person becomes legitimate once his or her parents intermarry. Once the parents intermarry the child is legitimate from birth for all purposes of the laws of British Columbia. From an administration point of view the parents must contact the Vital Statistics Branch and provide proof of paternity, such as a letter from a doctor, before legitimacy becomes official. In Alberta, the process for legitimization of children in this province is governed by the Legitimacy Act and provides that any child may be legitimized where his parents have intermarried after his birth.

ARTICLE 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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1. Legislative Provisions Authorizing Discrimination

Question

Are there legislative provisions in Canadian law which might authorize discrimination?

Question

Are they compatible with article 26 of the Covenant?

Partial Reply

SR 211, para 51.

Responses Summarized

Numerous respondents mentioned the implementation of affirmative action programs as being authorized discrimination. Due to the purpose of such programs, based as they are on assisting discriminated groups in attaining their due equality, it is difficult to describe these programs as discriminatory in the pejorative sense. The Fair Practices Ordinance of the Northwest Territories authorizes affirmative action programs by permit. In British Columbia, Nova Scotia, Manitoba, Prince Edward Island and Ontario exceptions are noted in the Human Rights legislation and affirmative action programs must be approved by the Human Rights Commissions. The Ontario Human Rights Code contains prohibition only for certain specific grounds and other bases of discrimination may give rise to civil remedies pursued by the individual. The Ontario Code does not provide protection on the grounds of: 1) language; 2) social origin; 3) property; 4) birth; or 5) other status. In answer to this question, Québec has made reference to the French version of Canada's Report at pages 546 to 548. Québec is the only province which provides protection against discrimination on the basis of sexual orientation in its human rights legislation.

The following legislative provisions in Alberta law may authorize discrimination:

1. The Marriage Act in respect of the marriage of females under 16;

2. The Maintenance and Recovery Act in respect of the legal process for the obtaining of maintenance orders against putative fathers or mothers;

3. The Seduction Act, which authorizes a father to commence an action in respect of the seduction of his female child;

4. The Alberta Home Mortgage Corporation Act, 1976 may discriminate against unmarried people with no dependents. Although this applies to both men and women, it is discrimination against women primarily as women usually earn less than men, cannot qualify for a regular mortgage yet cannot receive financial assistance under this Act. If they become partners, either within or outside marriage, they could qualify.

LIST OF APPENDICES*

APPENDIX I — Constitution Act, 1982

APPENDIX II — Québec Charter of Human Rights and Freedoms, R.S.Q. c. C-12

APPENDIX III — Poverty Levels of Family Units in Canada, in 1980

APPENDIX IV — Protection of Minorities in Canada: abstract from the annual report of the Department of the Secretary of State

APPENDIX V — Occupational Health and Safety Act, sections 12 to 48, (Québec), R.S.Q. c. S-2.1

APPENDIX VI — Mental Patients Protection Act, sections 12 to 31, (Québec), R.S.Q. c. P-41

APPENDIX VII — Regulation Under the Courts of Justice Act, (Québec), R.S.Q. c. T-16/R.5

APPENDIX VIII — Summary Prepared by the Federal Department of Justice

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LIST OF DOCUMENTS SUBMITTED TO THE SECRETARY-GENERAL OF THE UNITED NATIONS WITH THIS REPORT, BUT NOT APPENDED TO THE REPORT

1. Ontario Report: Today and Tommorrow
2. The Courts of Justice Act (Québec), R.S.Q. c. T-16
3. The Attorney-General for Canada vs. The City of Montréal and the Attorney-General for Québec

   - and -

   Claire Dupond vs. The City of Montréal and the Attorney-General for Québec

* One set of the following appendices was provided to the United Nations. For publication purposes, the appendices are separate from the Report and may be obtained from the respective sources.